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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT GEORGE ARVIZU,

Defendant and Appellant.

B284796

(Los Angeles County  
Super. Ct. No. PA083603)

APPEAL from a judgment of the Superior Court of Los Angeles County. David W. Stuart, Judge. Affirmed.

Kathy R. Moreno, 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, Senior Assistant Attorney General, Susan Sullivan Pithey and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant and appellant Robert George Arvizu appeals from his conviction by jury of first degree murder, and two counts of assault. Defendant was sentenced to a term of 25 years to life, plus three years. Defendant contends the record lacks substantial evidence supporting murder in the first degree, and that the trial court erred in admitting prior acts of domestic violence.

We conclude there is substantial evidence of premeditation and deliberation, and that the court acted well within its discretion in admitting the prior acts evidence pursuant to Evidence Code section 1109. We therefore affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Defendant was charged by information with two counts of assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4); counts 1 & 2), and one count of murder (§ 187, subd. (a); count 3). Defendant pled not guilty and the case proceeded to trial by jury in July 2017.

The following material facts were established by the testimony and evidence at trial.

#### **1. The Events of May 23, 2015**

Defendant and Courtney Arvizu got married in Las Vegas in March 2015. They lived in an apartment in Santa Clarita. Courtney's mother, Dawn P., lived across the street. On the afternoon of May 23, 2015, Dawn called Courtney to see if she could come over for a visit as her older sister had stopped by with her children. Courtney was not at home when she called.

Defendant and Courtney had driven to Northridge to go to a house party to celebrate the birthday of their friend, Erik Shapiro. It was a pool party, and the guests were mostly outside, drinking and talking. Defendant and Courtney appeared happy

when they arrived. At some point during the party, defendant and Courtney started arguing. Mr. Shapiro's wife, Maylin,<sup>1</sup> told him that defendant was out of control and he needed to handle the situation. She was concerned because defendant was being aggressive and there were children at the party.

Mr. Shapiro tried to calm down defendant to no avail. Defendant was yelling at Courtney that she was trying to put him in jail because of an incident that happened in Las Vegas for which he had been arrested. Defendant kept saying, "F--k you, you slut, you bitch, you whore." Courtney was standing somewhere behind Maylin. Defendant started yelling at Maylin for "defending" Courtney, telling her she did not know the whole story. Maylin, who had been friends with defendant for many years, grabbed defendant's face and told him to calm down, that he was embarrassing himself. Maylin also turned to Courtney and told her to be quiet and to stop yelling back at defendant. Mr. Shapiro told defendant he needed to leave and had to "practically carry[]" him out of the backyard to get him to go.

Defendant turned his anger on Mr. Shapiro, accusing him of "picking sides." Mr. Shapiro denied taking sides, explaining that the party was not the place to be arguing about the incident in Las Vegas. Defendant said he was angry because Courtney was cheating on him. Mr. Shapiro decided it would be best if he drove defendant home. Defendant continued to yell once they got into the car. At one point, defendant was on the phone with Courtney's mother, yelling at her and saying her daughter was "a piece of s--t" and "a whore." After getting off the phone,

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<sup>1</sup> Because of the common surname, we refer to Mrs. Shapiro by her first name for clarity.

defendant continued to berate Mr. Shapiro, accusing him again of taking sides, and repeatedly calling Courtney names.

Defendant's anger escalated and he eventually said he was going to kill Courtney. Mr. Shapiro told him to stop talking like that.

Mr. Shapiro knew defendant had two daughters from a prior relationship, so he told him again to calm down and to think about his girls. Defendant replied, "F--k my girls. I don't care about them."

While they were driving toward the 405 Freeway, defendant grabbed at Mr. Shapiro and put a hand on his throat. Mr. Shapiro pried his hand away and tried to keep driving. As they got on the freeway, defendant continued to yell, punched the dashboard, and again tried to choke Mr. Shapiro. Defendant then grabbed the steering wheel and the car jerked into the next lane. Defendant punched Mr. Shapiro three to five times in the face, causing Mr. Shapiro's nose to bleed. Mr. Shapiro was able to drive the car over to the shoulder and subdue defendant. They both got out of the car and defendant got down on his knees and said he was sorry, that he was just really angry.

Mr. Shapiro told defendant he would get him home but he had to control himself. They got back into the car and continued on toward Santa Clarita. Defendant continued to yell about Courtney, saying he hated her and wanted to kill her. By the time they exited the 14 Freeway in Santa Clarita, defendant was yelling and acting aggressively toward Mr. Shapiro once again. Defendant put his hands around Mr. Shapiro's neck. Mr. Shapiro stopped the car and yelled at defendant to get out. He left defendant on the side of the road. Mr. Shapiro then drove to a neighbor's house to clean up the blood that was all over his face before returning to the party. When he went back to the party,

Courtney was no longer there. A friend at the party who is a registered nurse said Mr. Shapiro's nose appeared to be broken.

After Mr. Shapiro had left with defendant, Maylin tried to get Courtney to go home with her. Defendant had left with Courtney's keys and cell phone so she could not drive herself home. Courtney said she would be okay, that she did not want to go home with Maylin because then defendant would also be mad at Maylin. Courtney said, "I'm not the kind of girl to back down." Another guest offered Courtney cab fare, but she declined. Courtney left the party, apparently alone. Maylin did not see her leave, but the car Courtney and defendant had arrived in remained parked at the house.

Sometime around 7:00 p.m., Dawn P. received a phone call from defendant. He told her that he and Courtney had gotten into a fight at a party and he had left without her. His ride had dropped him off near the freeway in Newhall, so he asked Dawn if she would come pick him up. She said she would.

Nicco Maggi was driving in Santa Clarita when he saw defendant walking along the street by himself. Mr. Maggi had been a friend of Courtney's for several years and she had recently introduced defendant to him. Mr. Maggi pulled over and offered defendant a ride. When he got into the car, Mr. Maggi noticed defendant had blood on his head. Defendant said he had gotten into a fight. He then started talking badly about Courtney, calling her a whore and saying she was sleeping around. Defendant was really angry and Mr. Maggi wanted him out of the car. He dropped defendant off in front of his apartment complex. Defendant called several times later that night talking about overdosing on heroin and asking Mr. Maggi to meet him at a nearby bar, but Mr. Maggi declined.

When Dawn P. could not find defendant where he had told her to meet him, she called him back. Defendant said he got a ride home with someone else and she should go home. Dawn expressed her concern about not being able to reach Courtney and told defendant she was going to drive to the party to try to find Courtney. Defendant told her not to, that he would do it instead.

Later on, Dawn P. received another call from defendant who told her that he found a set of Courtney's keys in their apartment, but Courtney was not there and neither was the car. He asked Dawn to check to see if Courtney's spare key was still at her apartment. Defendant's tone and demeanor were getting angrier with each phone call and he was starting to call Courtney names, like "slut."

Danny Konz<sup>2</sup> owned and managed the apartment complex where defendant and Courtney lived. Danny lived onsite with his girlfriend, Susan Brown. His son, Daniel, also lived in an apartment at the complex. Sometime in the late evening on May 23, Courtney knocked on Danny and Susan's door asking to be let into defendant's apartment. She said she did not have her key. Courtney was crying and appeared intoxicated. She said she and defendant had been at a party and gotten into an argument. She wanted to get her dog out of the apartment and go to her mother's home.

Because Courtney was not formally on the lease, Danny called defendant to ask if it was alright for them to let her in.

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<sup>2</sup> Danny's son is also named Daniel Konz and goes by Daniel. We refer to the son as Daniel and the father as Danny because of the common surname.

Defendant said yes, that he would be home soon. Defendant sounded angry and drunk. Danny asked defendant if he was okay to be driving and defendant said he was fine. Susan walked Courtney up to the apartment and let her in. Shortly thereafter, Danny received a call back from defendant who asked about whether Courtney was still at the apartment.

Dawn P. received another call from defendant who told her he was at a bar, but that his landlord had called to say that Courtney was at the apartment. Dawn was not sure if she could trust what defendant was saying, so she called the sheriff's department and asked them to check on Courtney at the apartment.

Shortly before 10:00 p.m., Daniel Konz was talking to some people outside his apartment and heard tires "squealing." He saw defendant's truck pulling into the complex at a fast speed which was not like defendant. Daniel considered defendant a friend and was concerned something might be wrong. He called defendant, but he did not pick up. Daniel was just leaving to pick up his girlfriend, so on his way out, he drove by defendant's apartment to check on him. He saw defendant standing outside next to his truck. Daniel yelled from his car if everything was okay. At that point, Daniel saw Courtney walk up and heard her yell at defendant, "give me my f--king keys." Courtney was holding her dog and telling defendant she was going to her mother's apartment. Courtney sounded angry and appeared intoxicated. Daniel assumed they were in the middle of an argument and he should not interfere, so he drove off. When he returned about 10 minutes later with his girlfriend, neither of them was still outside.

Around this same time, Danny called defendant to check if he had arrived home. Defendant answered and said everything was fine. Danny could hear Courtney in the background.

Maria Flores lived in the apartment below defendant and Courtney. Sometime after 10:00 p.m., Ms. Flores heard a loud noise from the upstairs apartment. It sounded like something heavy hitting the floor.

Around midnight, deputy sheriffs arrived at defendant's apartment to perform the welfare check prompted by Dawn P.'s call. Defendant answered the door and appeared intoxicated. All the lights were off in the apartment. Defendant told the deputies that Courtney was sleeping. They asked him to go get her and he closed the door and would not reopen it. The deputies received a priority call and had to leave. Deputies returned shortly before 2:00 a.m. This time when they knocked on the door, the door opened a few inches on its own but then caught on a "hotel lock." The deputies could see Courtney lying on the floor, so they kicked the door in to check on her. Courtney was dead. They found defendant passed out on the bathroom floor.

Daniel was still awake around 2:30 a.m. and noticed flashing lights outside, so he went to investigate. He saw patrol cars outside defendant's apartment and defendant was seated in the back of one of them. He tried to talk to defendant, but he seemed very intoxicated. Defendant slumped over in the seat and was making "guttural" noises.

An autopsy revealed that Courtney died from "smothering." Her eyes and gums had signs of petechia, caused by broken blood vessels indicative of asphyxiation. She had significant bruising, swelling and abrasions around her face and head, and a cut along one eyebrow. Her eyes were swollen shut and she had bruising



on her hands and forearms. Toxicology revealed she had alcohol in her system. The deputy medical examiner attested that death by asphyxia would likely take several minutes.

## **2. Prior Acts of Domestic Violence**

Defendant worked as a graphic designer for Michelle Romero. Sometime in early 2015, she asked defendant to attend a trade conference in Las Vegas. Courtney was also an employee and she went to the conference with defendant. Defendant called Ms. Romero from Las Vegas and told her he was in jail and asked for her help. Ms. Romero provided defendant with bail money. When defendant returned to work, he had a black eye. He told Ms. Romero he had been arrested because he and Courtney had gotten into an argument in their hotel room. He had been mad and jealous because Courtney flirted with an old friend of his that they ran into at the hotel. Defendant expressed concern about having to go to court or going to jail. He told Ms. Romero several times that he had not tried to kill Courtney, "If I wanted to kill her, I would have." When Ms. Romero talked to Courtney, she said she had been afraid defendant was going to kill her.

Aaron Frazier, an officer with the Las Vegas Metropolitan Police Department, testified to speaking with both defendant and Courtney on the day of the incident. Courtney had visible redness around her throat and an injury to her eye. Defendant told Officer Frazier that Courtney had punched and kicked him and he had grabbed her by the neck and strangled her. Defendant said he often choked her during sex but they had not been having sex this time.

E.S. testified that she dated defendant for a little over a year starting in 2005.<sup>3</sup> She eventually broke up with him because he constantly accused her of being unfaithful and he was physical with her. Defendant would choke her and sometimes grab her head and hit it against a hard surface. She never suffered any serious injuries, just bruising. A little over a year after breaking up with him, she agreed to see him again because she thought he had changed his life. He “quickly” became abusive again and E.S. broke it off for good.

D.C. testified she dated defendant for approximately two years, beginning in 2007. Defendant started out being verbally abusive, then progressed to pushing her and pinning her down when angry. D.C. said defendant eventually started strangling her. He regularly accused her of cheating on him and called her a “housewife whore.”

On D.C.’s birthday in 2009, defendant was angry about something, grabbed her by the arm and yanked her over a countertop where she had been standing. Defendant dragged her into a room and threatened to hit her with a metal bar. He did not hit her with it, but five days later, he got “psychotic” when D.C. said she thought they should take a break from seeing each other. He picked D.C. up by the throat and started to strangle her. She believed she lost consciousness for a bit, because she remembered waking up coughing and gasping for air. Defendant briefly left the room and she tried to call 911, but defendant returned and threw her phone against the wall. Defendant continued to abuse her for several hours, going through periods of

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<sup>3</sup> Because of the allegations of domestic violence, we refer to the victims by their initials for privacy.

calming down and then returning to yelling and trying to choke her. At one point, he was sitting on her and pressing on her throat so hard her lip burst open. D.C. tried talking to defendant and he eventually let her go. She ended the relationship but did not report the incident out of fear.

When D.C. heard about the death of Courtney, she went to the police to report what happened to her.

### **3. Defense Evidence**

Defendant exercised his right not to testify. Leeza Stillwell-Davis testified she had a relationship with defendant beginning in 1995 that lasted for six or seven years and resulted in two children. Ms. Stillwell-Davis said defendant was never violent with her and never choked her. Defendant's aunt testified that he lived with her after breaking up with E.S., and E.S. called her home for several months after the breakup wanting to speak with defendant.

Defendant also presented the testimony of Dr. Ryan O'Connor, an emergency room physician. He attested that individuals who binge drink or consume alcohol quickly can experience a condition called "alcohol-induced amnesia," which is different from passing out. He explained that someone may pass out from the depressive effects of alcohol. With alcohol-induced amnesia, someone will remain awake and can function to some extent, will talk and interact with others, but he or she will have no recall of what they were doing once sober. Episodic memory, or memory of specific events, is usually the most affected.

### **4. The Verdict and Sentencing**

The jury found defendant guilty of both counts of assault against Mr. Shapiro, and also found him guilty of the first degree murder of Courtney. The court sentenced defendant to a term of

25 years to life on the murder count (count 3). The court imposed a three-year midterm on each of the assault counts to be run concurrent, but ordered the three-year determinate term to run consecutive to the indeterminate sentence on count 3. Defendant was awarded 875 days of custody credits (actual days/no conduct credits).

This appeal followed.

## DISCUSSION

### 1. First Degree Murder

Defendant contends there is insufficient evidence demonstrating the existence of premeditation and deliberation and therefore the first degree murder conviction cannot stand. We do not agree.

“ ‘When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citation.] We determine ‘whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ [Citation.] In so doing, a reviewing court ‘presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.’ ” (*People v. Avila* (2009) 46 Cal.4th 680, 701; accord, *People v. Rodriguez* (1999) 20 Cal.4th 1, 11 [same standard applies even where prosecution mainly relies on circumstantial evidence].) “Reversal on this ground is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient

substantial evidence to support [the conviction].’ [Citation.]”  
(*People v. Bolin* (1998) 18 Cal.4th 297, 331; accord, *People v. Manriquez* (2005) 37 Cal.4th 547, 577 (*Manriquez*).)

In *People v. Anderson* (1968) 70 Cal.2d 15, 26-27 (*Anderson*), the Supreme Court “identified three types of evidence—evidence of planning activity, preexisting motive, and manner of killing—that assist in reviewing the sufficiency of the evidence supporting findings of premeditation and deliberation.” (*People v. Mendoza* (2011) 52 Cal.4th 1056, 1069.) However, the court made clear “that ‘*Anderson* did not purport to establish an exhaustive list that would exclude all other types and combinations of evidence that could support a finding of premeditation and deliberation.” [Citations.]’ [Citation.]” (*Mendoza*, at p. 1069; accord, *Manriquez, supra*, 37 Cal.4th at p. 577 [“ ‘*Anderson* was simply intended to guide an appellate court’s assessment whether the evidence supports an inference that the killing occurred as the result of preexisting reflection rather than unconsidered or rash impulse’ ”].)

There was ample evidence upon which the jury could reasonably conclude defendant killed Courtney with premeditation and deliberation. Over the course of the afternoon and into the evening of May 23, 2015, defendant repeatedly expressed anger to multiple individuals about Courtney and his belief that she was cheating on him. He said he hated her and wanted to kill her because she was a whore and because she was trying to put him in jail for the domestic violence incident in Las Vegas. He made repeated phone calls to Courtney’s mother, Dawn P., trying to find out if Courtney had arrived home. After learning from Danny Konz, his landlord, that Courtney had arrived at the apartment complex, defendant called Danny back

to see if Courtney was still there. A reasonable inference from this evidence is that defendant was planning on killing Courtney when he returned home and he was trying to verify that she was still there. The coroner testified that Courtney died from asphyxiation and that it would ordinarily take several minutes for someone to die from lack of oxygen.

The record does not reflect a sudden quarrel or heat of passion killing. Rather, the evidence established that defendant allowed his anger toward Courtney to fester the entire afternoon and into the evening, and he acted on his stated intention of killing her once they were both back at the apartment together, and that he did so in a manner that would require several minutes of sustained effort to accomplish. The record contains substantial evidence supporting the jury's conclusion that defendant committed first degree murder. (See, e.g., *People v. Lucero* (1988) 44 Cal.3d 1006, 1020 [ligature strangulation may reasonably be viewed by a jury as evidence of a preconceived design or premeditation]; *People v. Martinez* (1987) 193 Cal.App.3d 364, 371 [evidence of threats of harm by the defendant against his girlfriend occurring over a period of time supported the inference the defendant "previously formed the intent to kill" his girlfriend if he caught her with another man and that the eventual killing was "in conformity with that preconceived plan"].)

## **2. Prior Acts of Domestic Violence**

Defendant also challenges the admission of the prior acts of domestic violence pursuant to Evidence Code section 1109. Defendant contends the incidents involving E.S. and D.C. were too remote, and the facts regarding such incidents were too

inflammatory, such that the prejudice from such testimony greatly outweighed any probative value. We are not persuaded.

Evidence Code section 1109, subdivision (a)(1) provides in relevant part that “in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant’s commission of other domestic violence is not made inadmissible by Section 1101 if the evidence is not inadmissible pursuant to Section 352.” “By its incorporation of section 352, section 1109, subdivision (a)(1) makes evidence of *past domestic violence inadmissible only if the court determines that its probative value is ‘substantially outweighed’ by its prejudicial impact*. We review a challenge to a trial court’s decision to admit such evidence for abuse of discretion.” (*People v. Johnson* (2010) 185 Cal.App.4th 520, 531, italics added & fn. omitted (*Johnson*); see also *People v. Lewis* (2001) 26 Cal.4th 334, 374-375 [trial courts are vested with broad discretion in determining the admissibility of evidence under Evidence Code section 352].)

By enacting Evidence Code section 1109, the Legislature created an express exception in cases involving domestic violence to the general rule that prior criminal acts are inadmissible. “[T]he California Legislature has determined the policy considerations favoring the exclusion of evidence of uncharged domestic violence offenses are outweighed in criminal domestic violence cases by the policy considerations favoring the admission of such evidence.” [Citation.] Section 1109, in effect, ‘permits the admission of defendant’s other acts of domestic violence for the purpose of showing a propensity to commit such crimes. [Citation.]’ [Citations.] ‘[I]t is apparent that the Legislature considered the difficulties of proof unique to the prosecution of these crimes when compared with other crimes where propensity

evidence may be probative but has been historically prohibited.’ [Citation.]” (*People v. Brown* (2011) 192 Cal.App.4th 1222, 1232-1233.)

The incidents involving E.S. and D.C. occurred between 2005 and 2009, within 10 years of the charged incident in May 2015. Defendant has not shown the incidents should have been excluded as too remote. Trial courts are vested with broad discretion to consider the probative value of prior acts of domestic violence, including acts that are more than 10 years old. “Indeed, ‘[n]o specific time limits have been established for determining when an uncharged offense is so remote as to be inadmissible.’ [Citation.]” (*Johnson, supra*, 185 Cal.App.4th at p. 535; accord, *People v. Branch* (2001) 91 Cal.App.4th 274, 284 (*Branch*); see also Evid. Code, § 1109, subd. (e) [“[e]vidence of acts occurring more than 10 years before the charged offense is inadmissible under this section, unless the court determines that the admission of this evidence is in the interest of justice”].) The record here shows that the trial court reasonably considered the proffered evidence, excluded prior acts that occurred in the early 1990’s, and otherwise acted within its discretion in concluding the prior acts involving E.S. and D.C. were not too remote.

We also find no fault in the court’s assessment of probative value under Evidence Code section 352. E.S. attested that while dating defendant in 2005, he constantly accused her of cheating on him, and that he would then become very aggressive. She said he regularly choked her and grabbed her head and hit it against hard surfaces. Similarly, D.C. said defendant would get extremely angry, accuse her of infidelity and then try to strangle her.



D.C. testified with some detail about the final harrowing incident that ended their relationship in 2009 in which defendant assaulted her for several hours, causing her to lose consciousness and causing injuries to her face and lip before he eventually let her go. But those details were not more inflammatory than the assault on Courtney that resulted in her death as described by the medical examiner. He attested to serious trauma to Courtney's face and head, apparent defensive wounds on her forearms and hands, and death by smothering. Moreover, the testimony of E.S. and D.C. did not consume a lot of time, nor was it likely to confuse the jury.

The prior acts concerning E.S. and D.C. were strikingly similar to the attack on Courtney in the manner of attack, and therefore properly admitted. (*Branch, supra*, 91 Cal.App.4th at p. 285 [where the “prior offenses are very similar in nature to the charged offenses, the prior offenses have greater probative value in proving propensity to commit the charged offenses”]; see also *People v. Culbert* (2013) 218 Cal.App.4th 184, 191-193 [prior incident of threatening to kill wife 11 years earlier not too remote, nor too prejudicial in prosecution for threatening to kill stepson with gun].)

### **DISPOSITION**

The judgment of conviction is affirmed.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

GOODMAN, J.\*

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\* Retired Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.