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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.

EDWARD GARCIA,

Defendant and Appellant.

2d Crim. No. B266571
(Super. Ct. No. BA378772)
(Los Angeles County)

Edward Garcia appeals a judgment following conviction of first degree murder with special circumstance findings that the murder was committed while he was engaged in the commission of attempted robbery or robbery, and that the murder was intentional and involved the infliction of torture. (Pen. Code, §§ 187, subd. (a), 189, 190.2, subds. (a)(17)(A) [robbery] & (a)(18) [torture].)¹ We affirm.

¹ All further statutory references are to the Penal Code unless stated otherwise.

This appeal concerns the murder of Herbert Tracy White by Garcia and his wife, Melissa Garcia.² White, a recovering drug addict and drug counselor, befriended the Garcias who were homeless drug addicts in Hollywood. The method of killing White was ritualistic and gruesome. Following White's death, his body was dismembered and his body parts placed in a backpack or wrapped in bedding and left in a skid-row hotel room that White had rented for the couple. Approximately 10 days later, law enforcement officers detained the Garcias in Hollywood; they were then arrested and charged with White's murder.

FACTUAL AND PROCEDURAL HISTORY

For many years, White struggled with cocaine addiction, but maintained sobriety following his release from prison in 2001. He then married his longtime girlfriend, Annie Coty, and the couple lived in Hollywood. In November 2010, White met the Garcias as he obtained money from the automated teller machine at a bank near his home. White then gave the Garcias cash as well as his telephone number. Garcia later described White as "a nice guy" who suggested that they call him.

At approximately 1:30 a.m. on November 28, 2010, White received a telephone call that awakened him and Coty. The call originated from a pay telephone on Hollywood Boulevard. White answered the call and stated: "Okay. I'll be there." He then informed Coty that he had "to go out and pick up some people. . . . [T]hey need some help. . . . Crazy Hollywood people. You know

² We shall refer to Melissa Garcia as "Melissa," not from disrespect, but to ease the reader's task. Melissa is not a party to this appeal; the criminal proceedings against her were severed from those against her husband.

how they are.” White dressed, donned a baseball cap, and drove away in Coty’s automobile.

White met the Garcias in Hollywood and then drove them to the Continental Hotel, a “low-end” hotel with “turnaround” rooms located in downtown Los Angeles. Carlos Radillo, a security guard at the hotel, recalled that White and Garcia entered the second-floor hotel entrance and White asked for a hotel room. White also stated that he had “a girlfriend downstairs.” White then went downstairs and returned with Melissa.

Radillo notified the hotel night manager, Jon Boston, that the hotel had newly arrived guests. When Boston came to the hotel lobby, he recognized Garcia and Melissa as previous hotel guests. White informed Boston that he was not staying but was assisting Garcia and Melissa with their bags. Although the Garcias gave false names to Boston, he checked the hotel records and later entered their correct names on the hotel registry. Boston assigned room 66 to the Garcias, a room that they had occupied previously. The room was located at the end of the third-floor hallway near a fire escape landing with a telescoping ladder.

Approximately 30 minutes later, Boston saw White in the lobby walking toward the stairs leading to room 66. Boston informed White that he must now pay a \$10 guest fee. White paid the fee and Boston scanned White’s driver’s license onto the hotel registry at 3:05 a.m.

Richard Fletcher and his wife were long-term residents of the hotel whose room was directly below room 66. Early that morning, they were awakened by loud noises emanating from

room 66. Fletcher described the noises as “bumping, banging . . . scuffling” and “a brief grunting noise.”

Fletcher sought out and complained to security guard Radillo who then went to room 66. From the hallway, Radillo heard “a big argument” inside the room. He knocked on the door and a female responded, “Who is it?” Radillo stated that he was the hotel security guard and other guests were complaining. The female did not open the door but stated it was “[n]o problem” to be quiet. Radillo then returned to his lobby post.

After Fletcher returned to his room, he heard a female voice state, “Just grab the money.” Fletcher then walked to the communal bathroom on his floor. As he returned to his room, he saw a man sitting on the window ledge preparing to leave by the fire escape. Shortly thereafter, Fletcher walked to the window and saw the man climbing down the fire escape ladder and then joining a woman on the sidewalk. The two people then walked together toward 8th Street. Fletcher stated that this occurred between 4:00 a.m. and 4:30 a.m.

Later, in the afternoon of that day, a surveillance camera at a neighboring business captured a man and a woman descending the fire escape and walking away from the hotel. In a later image, they are walking back toward the hotel. At trial, the prosecutor played video clips of the images which were captured between 1:00 p.m. and 3:00 p.m. on November 28, 2010.

That same afternoon, Boston realized that the Garcias had not checked out of the hotel. He entered room 66 and saw that the bed was stripped of linens and blankets, a baseball cap lay on the bed, and a backpack was in the corner of the room. Boston then left the room for housekeeping to clean.

On November 29, 2010, the Continental Hotel housekeeper complained to Boston that a bundle under the bed in room 66 was “not right.” Boston entered the room and felt a “soft” bundle wrapped in the bed linens under the bed. He telephoned for police assistance and reported finding a possible dead body in the hotel.

Los Angeles police officers responded to Boston’s call regarding room 66. They opened the backpack left inside the room and found White’s arms, bound together with duct tape at his wrists. A shoestring was tied and knotted around one of his upper arm joints. A large piece of thigh flesh was also inside the backpack.

Police officers found the remaining parts of White’s body in the linen-wrapped bundle under the bed. White’s legs were severed at the hip joints and one leg was also severed at the knee. His penis and testicles had been removed “in one piece.” A pillow case within the bundle contained a large piece of thigh flesh. Inside the bundle were also a plastic sheet and a bloody knife with a three-inch blade. Later DNA testing of the blood on the blade revealed the presence of White’s blood. The bed comforter containing the body parts was saturated with blood.

The only clothing on White’s body parts was a pair of socks. One sock contained a \$20 and a \$5 bill. The linen bundle also contained clothing, a hypodermic syringe, bindles of crystal residue, and White’s cellular telephone, among other items.

The room contained bloodstains and blood splatter on the walls, floor, and furniture. The underside of the mattress was saturated with blood at the top and bottom portions; the mattress appeared to have been flipped. Items in the room included plastic medical gloves, plastic baggies containing

methamphetamine residue, beer cans, bloodstained boots, sexual lubricant, and duct tape. Garcia was found to be a DNA contributor to one plastic glove. One of the beer cans had been cut open and contained two small baggies of white powdery residue.

The room also contained White's tennis shoes, with a missing shoestring, neatly folded denim jeans, and his baseball cap. Although Coty stated that White carried many keys on a "weighty" key chain, no keys or money were found inside the room. There were bloodstains on the inside pockets of the denim jeans.

Police officers discovered Coty's automobile parked in front of the hotel and several days later returned it to her. Coty later found White's wallet, containing his identification and credit cards but no cash, in the trunk.

Autopsy of White's Body

Doctor Stephen Scholtz, a deputy medical examiner with the Los Angeles Coroner's Office, performed an autopsy on White's dismembered body. Scholtz opined that White died as a result of blunt and sharp trauma to his head and neck. Scholtz determined that the fatal wound was a three-to-four-inch deep stab wound that severed two major blood vessels in White's neck. A second stab wound to White's neck also contributed to his death. Scholtz opined that White may have died instantaneously or within several minutes from the two neck wounds. Laboratory testing of White's body fluids did not reveal the presence of alcohol or illegal drugs.

Scholtz opined that stab wounds three to four inches deep to White's collarbone and breast bone area were inflicted before he died. There were also burn marks, consistent with cigarette

burns, on White's abdomen area. Scholtz could not determine whether the burns were inflicted before White died. Prior to White's death, he suffered a black eye and had an unopened condom wrapper forced into his throat. Scholtz described the condom wrapper as "large enough to significantly impair the passage of air."

Scholtz also discovered additional superficial cuts and numerous stabbing wounds across White's face, chest, and abdomen. Scholtz opined that these wounds were inflicted near the time of White's death. Dismemberment of White's body, near-complete beheading, removal of his genitals, and debonement of his femurs and one arm was also performed postmortem, in Scholtz's opinion. He described the dismemberment as "neatly done" and performed by "a fairly meticulous procedure."

Doctor Frank Sheridan, Chief Medical Examiner for San Bernardino County, reviewed the autopsy report, autopsy photographs, and photographs of the crime scene. Sheridan agreed that White's death resulted from the two sharp stab wounds to his neck. Sheridan opined that the breastbone wounds and six facial wounds were inflicted before White died; the breastbone wounds would have been very painful and the facial wounds were inflicted methodically. Other superficial cuts as well as the black eye were also probably inflicted premortem. Sheridan could not determine when the condom wrapper was inserted into White's throat. Sheridan also opined that the dismemberment occurred after White's death and was performed "very efficiently and cleanly."

Garcia's Arrest and Police Interview

When police officers arrested Garcia on December 10, 2010, he had scabbed injuries on his left arm, a swollen knuckle on his right hand, cut marks between two fingers on his right hand, and scabs on several fingers on his right hand.

In a recorded interview, police officers interviewed Garcia following advice of and waiver of his rights pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436. Garcia stated that he and his wife had been living in a homeless encampment after their vehicle had been towed. He stated that he met White near a Hollywood bank and that White gave him and Melissa money. Garcia admitted that he telephoned White the early morning of November 28, 2010, because it was raining and he and Melissa were homeless. Garcia also thought that White might have been sexually interested in Melissa.

Garcia stated that after White paid for their hotel room, White went downstairs and then returned with four bags of methamphetamine. Garcia stated that he did not use methamphetamine, but decided to inject himself with two bags of the drug. He recalled taking a shower thereafter, but nothing further until he awoke in a different neighborhood the next day. When he awoke, he saw that Melissa's hair was red with blood.

Garcia later admitted that he and Melissa "went ape-shit" in the hotel room and there was "no denying" that he was in the room and "did everything." Garcia also admitted that the condition of the hotel room the next day indicated "[n]ightmare-type shit," and "[a] dismemberment of a human being." He also asked the interviewing detectives if there was "evidence of any robbery?" and answered the question himself, "There was no evidence. I don't think it was a robbery."

Garcia stated that he was 6'2" and that White was similar in size or taller. He also identified a photograph of a knife recovered at the crime scene as a photograph of his knife. Garcia then stated that he knew his life was over and that he was sorry for White's death. At trial, the prosecutor played the recording of Garcia's police interview.

York, Pennsylvania Prior Crimes Evidence

On February 22, 2009, Markus Carwell was looking for his friend, Carlton Anderson, because Anderson had borrowed Carwell's automobile. Carwell saw his automobile parked near a York "drug house." Carwell knocked on the door of the house and a person permitted him to enter. As Carwell walked through the dark house, he found Anderson sitting in a chair with his hands restrained. At the same time, someone attacked Carwell from behind with a knife. When Carwell grabbed the knife, he sustained a severe hand injury. Carwell fled the house and later had surgery to repair injured nerves and tendons in his left hand.

Later that morning, York police officers responded to a reported shooting at Garcia's residence. Inside, Melissa had a gunshot wound to her foot. Garcia was outside chasing Anderson down the street. As officers pursued, Garcia threw a set of police-type leg shackles onto a garage roof. When they eventually detained the two men, officers saw that Garcia and Anderson had significant injuries to their hands. Anderson was a Black male who was 6'4" tall and weighed 240 pounds – "linebacker big."

Police officers searched the Garcias' residence and found many knives throughout. In the bedroom, officers discovered two meat hooks mounted on the wall, electrical tape on the bed, a rubber mallet, and bloodstained clothing. In the living room,

officers found an electronic stun gun, nylon rope, bloodstained clothing, and a copy of the textbook Gray's Anatomy.

Police officers charged Carwell's brother with shooting Melissa. Anderson was reluctant to cooperate with police officers, but eventually gave a statement.

When interviewed by York police officers, Garcia admitted that he and Melissa lured Anderson to their residence, offering sex in exchange for drugs. There, Garcia shackled Anderson's feet and tied his hands with a rope, and took crack cocaine from him. Garcia denied that he intended to hurt Anderson and claimed that he held Anderson only a short time. Garcia later entered a plea to a misdemeanor charge. The prosecutor played a recording of the York interview.

Ryan Smith was a friend to Garcia and Melissa and also a fellow drug user. Garcia informed Smith that they lured Anderson to their residence where they had planned to rob and kill him, dismember his body, and freeze his body parts. Garcia stated that he and Melissa agreed with Anderson that no one would testify at trial. Smith also testified that Garcia and Melissa stated that they fantasized regarding "hav[ing] sex on somebody's blood."

Henry Hartford, Garcia's former roommate in Pennsylvania, testified that Garcia used heroin, crack cocaine, and other drugs. In conversations with Hartford, Garcia expressed an interest in abducting homeless persons, killing them, and dismembering their bodies. Garcia also spoke of binding people and cutting them with knives.

Expert Witness Testimony

Doctor Dawn Perlmutter testified regarding ritualistic crimes. She reviewed the crime scene, autopsy reports, and

interviews of Garcia and Melissa. Perlmutter opined that White was the victim of a ritual killing based upon his body dismemberment, decapitation, filleting of his thighs, castration, and placement of his limbs, among other things.

Conviction, Sentencing, and Appeal

The jury convicted Garcia of first degree murder and found that the murder was committed while Garcia was engaged in the commission of attempted robbery or robbery, and was intentional and involved the infliction of torture. (§§ 187, subd. (a), 189, 190.2, subds. (a)(17)(A) & (a)(18).) The trial court sentenced Garcia to a life term without the possibility of parole, ordered restitution, and imposed a \$300 restitution fine, a \$70 court security assessment, and a \$30 criminal conviction assessment. (§§ 1202.4, subds. (f) & (b), 1465.8, subd. (a); Gov. Code, § 70373.)

Garcia appeals and contends: 1) the trial court abused its discretion by admitting evidence of his criminal acts committed in York, Pennsylvania; 2) insufficient evidence supports the special circumstance findings; and 3) insufficient evidence supports the prosecution theories of felony-murder.

DISCUSSION

I.

Garcia argues that the trial court abused its discretion by admitting evidence of his prior criminal acts as well as evidence of his statements to former friends, Smith and Hartford. He contends that the evidence is inadmissible propensity evidence pursuant to Evidence Code section 1101, subdivision (a), that deprived him of due process of law pursuant to the United States and California Constitutions.³ Garcia also asserts that the

³ All statutory references in Part *I* refer to the Evidence Code.

prosecutor committed misconduct by misusing this evidence during summation.

Section 1101, subdivision (a) prohibits the admission of character evidence if offered to prove conduct in conformity with that character trait, sometimes described as propensity evidence. (*People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 405-406.) Section 1101, subdivision (b) permits evidence of a prior or uncharged act, however, when relevant to prove some other disputed fact. (*Bryant, Smith and Wheeler*, at p. 406.) “If an uncharged act is relevant to prove some fact other than propensity, the evidence is admissible, subject to a limiting instruction upon request.” (*Ibid.*)

Even if uncharged acts evidence is otherwise admissible, a defendant may assert that section 352 precludes the evidence. (*People v. Bryant, Smith and Wheeler, supra*, 60 Cal.4th 335, 406.) Pursuant to section 352, a trial court may exclude otherwise relevant evidence if its probative value is substantially outweighed by concerns of undue prejudice, confusion, or consumption of time. (*People v. Edwards* (2013) 57 Cal.4th 658, 713.) Evidence is substantially more prejudicial than probative if it presents an intolerable risk to the fairness of the proceedings or the reliability of the outcome. (*Ibid.*; *People v. Eubanks* (2011) 53 Cal.4th 110, 144 [“undue prejudice” as used within section 352 refers to prejudging a person on the basis of extraneous factors].) We test the court’s ruling pursuant to section 352 for an abuse of discretion; that is, whether the court exercised its discretion in an arbitrary or unreasonable manner. (*People v. Suff* (2014) 58 Cal.4th 1013, 1066.)

The trial court did not abuse its discretion by admitting evidence of Garcia’s uncharged crimes in York and his

statements to former friends regarding killing and dismemberment. Section 1101, subdivision (b) includes “a crime, civil wrong, or other act”. Although Garcia pleaded guilty to a misdemeanor, section 1101, subdivision (b) applies to Garcia’s prior bad acts as bear upon his intent, including the elements of premeditation and deliberation, in the murder of White. The evidence also was relevant to negate any defense of methamphetamine intoxication, as asserted by Garcia during his police interview.

The prior crimes evidence also was relevant to the existence of a common scheme or plan to rob, kill, and dismember men who have been lured to a location to have sex with Melissa. Anderson had his pants down when Garcia incapacitated him in York; White’s pants were neatly folded in the hotel room and sexual lubricant and a condom were available. The Garcias selected victims who had money or drugs; they met White as he withdrew money from an automated teller machine, and they robbed Anderson of cocaine. Each victim was bound or shackled and attacked with a knife. Moreover, Garcia’s statements to his former friends explained his interest in abducting, robbing, killing, and dismembering people.

The evidence was also not unduly prejudicial and no more inflammatory than the present charged crimes. (*People v. Eubanks, supra*, 53 Cal.4th 110, 144.) “The potential for such prejudice is ‘decreased’ when testimony describing the defendant’s uncharged acts is ‘no stronger and no more inflammatory than the testimony concerning the charged offenses.’” (*Ibid.*)

Garcia also complains that during summation the prosecutor stated that “[j]ustice was not served in York City”

because Garcia was not sentenced to prison and that “if justice was served there, it’s a very good chance that Mr. White would not have died the way he did and when he did here.” Following Garcia’s unsuccessful objection to this argument, the prosecutor informed the jury that “we are not here to hold Mr. Garcia accountable for what happened in York,” and the prior crimes evidence was admissible only to prove motive, intent, premeditation, deliberation and modus operandi. The prosecutor continued: “That’s why that evidence is admissible here, and I hope you understand that those are the permissible uses for it. I did not mean to suggest in any way that we are holding him accountable for something that happened in York.”

The standards governing review of claims of prosecutorial misconduct are well settled. (*People v. Adams* (2014) 60 Cal.4th 541, 568.) When a prosecutor’s intemperate behavior is sufficiently egregious that it infects the trial with such a degree of unfairness as to render the subsequent conviction a denial of due process, the misconduct violates the United States Constitution. (*Ibid.*) Prosecutorial misconduct that falls short of rendering the trial fundamentally unfair may still constitute misconduct under state law if it involves the use of deceptive or reprehensible methods to persuade the court or jury. (*Ibid.*)

To prevail on a claim of prosecutorial misconduct based on remarks to the jury, the defendant must show a reasonable likelihood that the jury understood or applied the complained-of comments in an improper or erroneous manner. (*People v. Centeno* (2014) 60 Cal.4th 659, 667; *People v. Caldwell* (2013) 212 Cal.App.4th 1262, 1269.) A prosecutor possesses wide latitude, however, to vigorously argue his case and to make fair comment upon the evidence. (*Caldwell*, at p. 1269.) In our assessment of

prosecutorial misconduct, we do not lightly infer that the jury drew the most damaging rather than the least damaging inferences from the prosecutor's statements. (*Centeno*, at p. 667.) Although a defendant singles out words and phrases of claimed misconduct, we view the statements in the context of the whole argument. (*People v. Dennis* (1998) 17 Cal.4th 468, 522.)

In view of the prosecutor's later remarks regarding the use of the York crimes evidence, there is no reasonable likelihood that the jury misunderstood the significance of the other crimes evidence or applied the evidence in an improper manner. The trial court also properly instructed regarding the specific limited use of other crimes evidence and stated that the evidence was not to be considered for criminal disposition. The questioned remarks considered as a whole do not constitute prosecutor misconduct.

II.

Garcia argues that insufficient evidence supports the special circumstance findings of robbery and torture, thereby denying him due process of law pursuant to the United States and California Constitutions.

Regarding the robbery or attempted robbery special circumstance, Garcia argues that there is insufficient evidence that he intended to commit robbery of White at or before White was killed, or that he took property from White. (*People v. Lewis* (2001) 25 Cal.4th 610, 647.) He also asserts that there is insufficient evidence that he was a major participant in the robbery or attempted robbery, relying upon *People v. Banks* (2015) 61 Cal.4th 788, 802-803 [insufficient evidence to sustain felony murder special circumstance where defendant was mere

getaway driver in armed robbery during which a guard was killed].

Regarding the torture-murder special circumstance, Garcia asserts that there is no evidence that White was kept alive for the purpose of causing him pain. He also relies upon the autopsy evidence that White's death occurred quickly after infliction of the two neck stab wounds.

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. Sanchez* (2016) 63 Cal.4th 411, 453-454; *People v. Johnson* (2015) 60 Cal.4th 966, 988.) Our review is the same in a prosecution primarily resting upon circumstantial evidence. (*Johnson*, at p. 988; *People v. Watkins* (2012) 55 Cal.4th 999, 1020.) We do not redetermine the weight of the evidence or the credibility of witnesses. (*People v. Albillar* (2010) 51 Cal.4th 47, 60; *People v. Young* (2005) 34 Cal.4th 1149, 1181 ["Resolution of conflicts and inconsistencies in the testimony [are] the exclusive province of the trier of fact"].) We must accept logical inferences that the jury might have drawn from the evidence even if we would have concluded otherwise. (*People v. Streeter* (2012) 54 Cal.4th 205, 241.) "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." (*Albillar*, at p. 60.)

Robbery Special Circumstance

Sufficient evidence and all reasonable inferences therefrom support the robbery special circumstance finding. Garcia and Melissa were destitute, homeless drug addicts when they encountered White at the Hollywood bank. Garcia admitted that he later telephoned White, who then drove them to the Continental Hotel and paid for their hotel room. White's wallet was eventually found by his wife in the trunk of her automobile, emptied of any cash but still containing his identification. White's keys have never been found. Bloodstains on the inside of his jeans pockets suggest that Garcia or Melissa searched the pockets for cash or items of value.

Moreover, Garcia admitted during his police interview that he and Melissa returned to the area sometime later to purchase heroin and look for White's automobile, permitting the reasonable inference that he had the keys to the vehicle. Tellingly, Garcia also asked during his police interview if the police found "evidence of a robbery." He then answered his own inquiry by stating, "There was no evidence. I don't think it was a robbery."

Unlike the factual circumstances in *People v. Banks, supra*, 61 Cal.4th 788, Garcia was present in the hotel room during White's killing, death, and dismemberment. Garcia admitted that the knife found within the hotel room was his knife. His DNA was found on a plastic glove wrapped within the linen bundle. Garcia, like White, was a large man who had previously subdued Anderson, a man with a "linebacker" physique. When arrested, Garcia had cuts and scabs on his hand. Finally, Garcia admitted during his police interview that he went "ape-shit" and "did everything" in the hotel room. Garcia was not a mere

getaway driver as in *Banks*. (*Id.* at p. 805.) The only reasonable conclusion is that Garcia was a major participant in the robbery and killing.

Torture-Murder Special Circumstance

To establish a torture-murder special circumstance, the prosecutor must show that the defendant intended to kill and had a torturous intent – an intent to cause extreme pain or suffering for a sadistic purpose. (*People v. Hajek and Vo* (2014) 58 Cal.4th 1144, 1187, overruled on other grounds by *People v. Rangel* (2016) 62 Cal.4th 1192, 1216.) There is no requirement that the victim be aware of the pain. (*Ibid.*) This sufficiency-of-evidence inquiry is directed at evidence of defendant’s torturous intent. (*Ibid.*)

Defendant’s intent may be established by examining the circumstances of the crime, e.g., the nature and severity of the victim’s wounds, or defendant’s statements revealing his state of mind during the crime. (*People v. Hajek and Vo, supra*, 58 Cal.4th 1144, 1187-1188.) Infliction of nonlethal wounds may demonstrate defendant’s sadistic intent to cause the victim to suffer pain in addition to the pain of death. (*Id.* at p. 1188.) Evidence of the victim’s binding or gagging that renders him unable to resist any violence is also relevant to establishing defendant’s torturous intent. (*Ibid.*)

Sufficient evidence and reasonable inferences therefrom support the torture-murder special circumstance. White’s wrists were bound with duct tape and a wrapped condom was forced into his throat, impairing his respiration and ability to cry out. Doctor Sheridan concluded that “very painful” cuts were made to White’s breastbone and methodical cuts were inflicted to his face while he was alive. (*People v. Hajek and Vo, supra*, 58 Cal.4th

1144, 1188 [nonlethal wounds may establish sadistic intent]; *People v. Raley* (1992) 2 Cal.4th 870, 889 [41 knife wounds inflicted during a 15-minute attack].) White also suffered a black eye and cigarette burns to his torso. The two fatal neck wounds severed critical blood vessels and caused White to bleed to death within several minutes. Moreover, Garcia stated that he went “ape-shit” in the hotel room and described the murder and dismemberment as a “[n]ightmare.”

III.

Garcia argues that insufficient evidence supports the prosecutor’s alternate felony-murder theory of robbery or torture.

We need not discuss this contention because the evidence of premeditated and deliberate murder is overwhelming and unchallenged. Thus, assuming for purposes of argument only, that the theory of felony-murder is not supported by sufficient evidence, there is no prejudice and reversal is not required. (*People v. Seaton* (2001) 26 Cal.4th 598, 645 [reviewing court must assume the jury based its conviction on the theory that is supported by the evidence].)

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Larry P. Fidler, Judge

Superior Court County of Los Angeles

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