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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.

LEONARD EARL BALES,

Defendant and Appellant.

B280877

(Los Angeles County
Super. Ct. No. MA067063)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kathleen Blanchard, Judge. Affirmed.

Brad Kaiserman, 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, Marc A. Kohm and Gregory B. Wagner, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Leonard Earl Bales was convicted of numerous felonies with enhancements. On appeal, he challenges the sufficiency of the evidence to support the finding that he attempted to kill Amanda and that the attempted murder was with premeditation and deliberation. We affirm.

BACKGROUND

Amanda worked as a prostitute. On September 26, 2015, defendant hired her to orally copulate him. After defendant stopped at a bank and while parked in his vehicle, defendant pulled down his shorts, and removed a belt, which he placed around his neck. Amanda started to orally copulate defendant as he remained seated in his car.

After some time, defendant had not ejaculated. Amanda continued to orally copulate him but eventually told defendant that she had to leave and moved towards opening the car door. Before she was able to open the door, defendant placed his belt around her neck to choke her. Defendant took Amanda's phone and money and forced her to remove her clothing.

Defendant caused Amanda to faint twice by forcefully pulling on the belt and thereby preventing Amanda from breathing. Defendant then started to drive; he continued to pull on the belt making it difficult for Amanda to breathe. Defendant told Amanda to cover her head with her shirt so that she could not see where they were going.

Defendant stopped in a driveway. He took Amanda inside a house warning her that he would "hang" her if she did not follow his instructions. Amanda observed a rope hanging from the ceiling in the garage.

Once inside the house, at defendant's instruction, Amanda orally copulated him. Defendant ejaculated in Amanda's mouth and told Amanda to spit the semen on the carpet.

Defendant tied Amanda's hands behind her back and then tied her feet to her hands. He then dragged Amanda into the bathroom and pushed her into the bathtub. Amanda hit the side of her head on the bathtub and, as a result, had difficulty hearing. She was afraid that defendant would kill her.

Defendant told Amanda he was leaving but he would watch her on video monitors. Defendant threatened to kill her if she moved. Defendant told her he would kill her and he had "done it before."

Amanda had difficulty seeing as a result of the earlier strangulation. Eventually, she was able to untie her feet, which were purple and numb. Once she was able to walk, she escaped to a neighbor's house.

Amanda was observed to have bruises on her face, blood in her eyeballs, wounds on her neck, ankles, feet, and wrists. Amanda's face was blue. She had other symptoms consistent with severe strangulations such as restlessness, coughing, difficulty swallowing, and severe headaches. Amanda also reported that during the incident she had urinated on herself, which was a sign that she was "very close to death."

PROCEDURE

Defendant was charged with forcible oral copulation, and it was alleged this offense was committed while kidnapping the victim, tying or binding the victim, and personally inflicting great bodily injury on the victim. Defendant also was charged with kidnapping to commit another crime with the use of a deadly and dangerous weapon and with the infliction of great bodily injury.

Defendant was further charged with attempted willful, deliberate, and premeditated murder with personal use of a deadly and dangerous weapon and the personal infliction of great bodily injury enhancements. Defendant was charged with criminal threats with personal use of a deadly weapon and great bodily injury enhancements, assault with a deadly weapon with personal use and great bodily injury enhancements, false imprisonment by violence with personal use of a deadly weapon and great bodily injury enhancements, and assault with intent to commit a felony with personal use of a deadly weapon and great bodily injury enhancements. It was alleged that defendant was previously convicted of two serious or violent felonies and that he served three prison terms within the meaning of Penal Code section 667.5, subdivision (b). One of the prior felonies was involuntary manslaughter.

During closing argument, the prosecutor limited the attempted murder to the events in the car “when he wrapped that belt around her and she passed out.” The prosecutor argued that defendant intended to kill Amanda when he strangled her. Defendant’s counsel argued that defendant intended only to “restrain[]” Amanda and move her to another location. Jurors were instructed on attempted murder and on the meaning of willful, deliberate, and premeditated murder.

Defendant was convicted as charged, except that jurors found no personal use of a deadly weapon as to the assault. The court found that defendant committed two prior serious felonies, and served two prior prison terms. The court sentenced defendant to state prison for a 39-year determinate term and a 125-year-to-life indeterminate term.

The court explained its sentencing as follows: The crimes “involve separate acts of extreme violence. And also they were committed at different times and at separate places. . . . In particular, the court sees the attempted murder in count 3 as having happened inside the car when it was parked in the parking lot and when the defendant initially put the belt around the victim’s neck and choked her to unconsciousness.” “[I]t is this court’s intention—keeping in mind the number one priority is the safety of the community—to try to ensure that Mr. Bales never get[s] out-of-custody The fact that he already served 12-years for the strangulation death of a prostitute. And after serving that 12-years, while on parole for that crime, committed these crimes, shows that he is a grave danger to society.”

This appeal followed.

DISCUSSION

The relevant law is well settled and undisputed. A conviction for attempted murder requires the specific intent to kill and a direct act toward the killing. (*People v. Smith* (2005) 37 Cal.4th 733, 739.) Attempted murder necessarily is willful and may also be committed with premeditation and deliberation. (*People v. Concha* (2010) 182 Cal.App.4th 1072, 1083.) “ ‘A verdict of deliberate and premeditated first degree murder requires more than a showing of intent to kill. [Citation.] ‘Deliberation’ refers to careful weighing of considerations in forming a course of action; ‘premeditation’ means thought over in advance. [Citations.]” [Citation.] “ ‘Premeditation and deliberation can occur in a brief interval. “The test is not time, but reflection. ‘Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly.’ ” ’ ” ’ ” ’ ” (*People v. Mendoza* (2011) 52 Cal.4th 1056, 1069.)

“ ‘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.’ [Citation.] ‘This standard applies whether direct or circumstantial evidence is involved.’ [Citation.] ‘[I]t is well settled that intent to kill or express malice, the mental state required to convict a defendant of attempted murder, may . . . be inferred from the defendant’s acts and the circumstances of the crime.’ ” (*People v. Avila* (2009) 46 Cal.4th 680, 701.)

The following evidence supported the attempted murder conviction. When Amanda told defendant she had to leave and moved towards the door, he wrapped his belt around her neck and choked her. Intent to kill may be inferred from defendant’s purposeful placement of the belt around his neck “like . . . a necklace” prior to strangling Amanda with it. Defendant chose not to leave the belt in his shorts. The evidence that defendant rendered Amanda unconscious more than once, supporting the inference that he intended to kill her. Defendant later confirmed his intent when he told her he would kill her and had previously killed someone. The fact that defendant may have harbored other intents does not show that reversal is required even if the

evidence may be reconciled with a different finding. (*People v. Avila, supra*, 46 Cal.4th at pp. 702-703.)

The same evidence supported the jurors' conclusion that defendant acted with premeditation and deliberation. Defendant removed the belt from his shorts and placed it around his neck; then subsequently he removed the belt from his neck and placed it around Amanda's neck. Jurors could conclude that defendant placed the belt around his neck to easily strangle Amanda. This conclusion is further supported by the evidence that defendant told Amanda that he would kill her and "he's done it before." Defendant's conduct indicated planning—having the belt ready to wrap around her neck. The manner also supported the premeditation and deliberation finding as defendant pulled so hard multiple times causing Amanda to become unconscious, causing her face to turn blue, and causing severe wounds around her neck, and injuries to her eyes.¹ "The process of premeditation and deliberation does not require any extended period of time. "The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each

¹ Defendant's reliance on *People v. Anderson* is misplaced. Our high court explained: "In *People v. Anderson* (1968) 70 Cal.2d 15, 26-27, we identified three categories of evidence relevant to determining premeditation and deliberation: (1) events before the murder that indicate planning; (2) a motive to kill; and (3) a manner of killing that reflects a preconceived design to kill. As we have repeatedly pointed out, and now reaffirm, '[t]he *Anderson* guidelines are descriptive, not normative. [Citation.]' [Citation.] They are not all required [citation], nor are they exclusive in describing the evidence that will support a finding of premeditation and deliberation." (*People v. Gonzalez* (2012) 54 Cal.4th 643, 663.)

other with great rapidity and cold, calculated judgment may be arrived at quickly.” ’ ’ ” (*People v. Koontz* (2002) 27 Cal.4th 1041, 1080.) In short, defendant’s challenge to the sufficiency of the evidence lacks merit.

Finally, it is undisputed that the abstract of judgment must be amended to reflect the sentence imposed by the trial court. The sentence included 75 years to life for the forcible oral copulation with kidnapping, a sentence imposed under the “Three Strikes” law. The abstract reflects a 25-year-to-life, not the 75-year-to-life, sentence.

DISPOSITION

The judgment is affirmed. The clerk of the Superior Court is directed to prepare an amended abstract of judgment reflecting a 75-year-to-life sentence on count 1 and to forward a certified copy to the Department of Corrections and Rehabilitation.

SORTINO, J.*

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.

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