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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>LAMUJADU KOROMAH<br><br>Defendant and Appellant. | B278421<br><br>(Los Angeles County Super. Ct. No. KA110362) |

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

Ava R. Stralla, 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, Susan Sullivan Pithey and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

Lamujadu Koromah appeals from a judgment entered after a jury found him guilty of one count of attempted murder. He contends the evidence of intent and deliberation was insufficient and the trial court erred by failing to instruct the jury on attempted voluntary manslaughter. We affirm.

## BACKGROUND

Koromah and Jennifer Doe, who worked together as nursing assistants, began dating in 2014 but broke up in January 2015, when Doe rejected Koromah's proposal of marriage. For months thereafter they shared an on-and-off-again relationship that was sometimes close but on Doe's part mostly platonic, during which Koromah again proposed marriage and Doe again turned him down. During those months Koromah frequently expressed his desire to have a closer relationship with Doe, but she repeatedly rebuffed him, after which he sometimes sent her resentful text messages. For example, he wrote, "You're always cutting off relationship [*sic*] like you're the only woman in the world. I told you before that if you ever want to cut off relationship again, it will be over for real. I bet you're going to regret every part of your decision." Koromah wrote in a journal that "the one that I touched was my girlfriend she just told me we don't have a relationship. How sad is that. I'm probably gonna drink. I've never dr[u]nk alcohol in my life." He also wrote, "The word ex in every relationship has a variety of definitions. Some are ex-lover . . . , ex-betrayal, ex-killer, ex-diminisher, ex-destroyer, ex-heartbreaker, ex-fake lover, ex-undependable, ex-failure, ex-disastrous woman."

On August 6, 2015, after Doe arrived home from a date with another man, Koromah entered her backyard wearing vinyl nursing gloves and carrying a knife. He told her, "I've been

trailing you," pushed her against a wall, and stabbed her in the abdomen. A long struggle ensued during which Doe mostly held the advantage but sustained serious knife wounds. The fight eventually moved to the street, where Doe sustained a fourth serious wound. Koromah then raised his gloved hands, said, "They won't know it's me," and ran off.

A jury found Koromah guilty of attempted murder (Pen. Code, §§ 187, subd. (a), 664),[1] and found deadly weapon and great bodily injury allegations to be true (§§ 12022, subd. (b)(1), 12022.7, subd. (a)). The jury also found true an allegation that Koromah committed the attempted murder willfully, deliberately and with premeditation. The trial court sentenced Koromah to life in prison with the possibility of parole plus one consecutive year for the personal knife use and four consecutive years for the infliction of great bodily injury. Koromah timely appealed.

## DISCUSSION

### A. Sufficiency of Evidence Supported the Jury's Finding of a Willful, Deliberate and Premeditated Attempted Murder

Koromah argues there was insufficient evidence to prove either intent to kill or premeditation and deliberation. We disagree.

"Attempted murder requires the specific intent to kill and the commission of a direct but ineffectual act toward accomplishing the intended killing." (*People v. Lee* (2003) 31 Cal.4th 613, 623.) Because there is rarely direct evidence of specific intent, it must usually be shown from the circumstances of the crime. (*People v. Lashley* (1991) 1 Cal.App.4th 938, 945-

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

946.) The fact that an attempt was unsuccessful does not establish a defendant acted without intent to kill. (*People v. Smith* (2005) 37 Cal.4th 733, 742.)

"On appeal, we review the whole record in the light most favorable to the judgment below to determine whether it discloses 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." (*People v. Koontz* (2002) 27 Cal.4th 1041, 1078.) We presume the existence of every fact the jury could reasonably deduce and make all reasonable inferences that support the judgment. (*People v. Barnes* (1986) 42 Cal.3d 284, 303; *People v. Catlin* (2001) 26 Cal.4th 81, 139.) The "direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact." (Evid. Code, § 411.) "We do not reevaluate witness credibility nor do we reweigh the evidence." (*People v. Ramos* (2011) 193 Cal.App.4th 43, 47.)

Here, the jurors could reasonably infer Koromah intended to kill Doe from the simple fact that he stabbed her four times, first in the abdomen. (*People v. Bolden* (2002) 29 Cal.4th 515, 560-561 [the act of stabbing a victim in a manner that could have inflicted a mortal wound sufficient to support an inference of intent to kill the victim].)

Citing *People v. Merkouris* (1956) 46 Cal.2d 540, 561, Koromah argues that to support a finding of guilt based on circumstantial evidence, the facts and circumstances must be inconsistent with any other reasonable conclusion. He argues that pursuant to *Merkouris*, the jury here was compelled to find him not guilty because facts and circumstances were reasonably consistent with innocence—the initial stab wound was shallow,

the knife was small, and he made no statement expressing intent to kill. The argument is patently meritless. *Merkouris* held only that a jury must find a defendant not guilty if *it finds* the facts are susceptible of two reasonable interpretations, one pointing to guilt and the other to innocence. (*Id*. at p. 562.) But here, the jury implicitly rejected Koromah's exculpatory evidence when it found him guilty. We may not reweigh the evidence.

Continuing in his misunderstanding of *People v. Merkouris*, Koromah contends no substantial evidence supported the jury's finding of deliberation and premeditation because the evidence was equally consistent with an unplanned, impulsive attack on Doe. We disagree.

The crime of attempted premeditated murder requires proof that the defendant acted with deliberation and premeditation. (§§ 189 & 664, subd. (a).) Deliberation is the careful weighing of considerations in forming a course of action. (*People v. Salazar* (2016) 63 Cal.4th 214, 245.) Premeditation means "thought over in advance." (*People v. Sandoval* (2015) 62 Cal.4th 394, 424.) Deliberation and premeditation can be shown by a defendant's motive, his prior planning, or the manner in which he commits a crime. (*People v. Anderson* (1968) 70 Cal.2d 15, 26-27.)

Substantial evidence supports the jury's finding that Koromah stabbed Doe with deliberation and premeditation. He had a motive to attack her because he resented that she had rebuffed his affections and had twice rejected proposals of marriage. On the night of the attack he "trailed" Doe without her knowledge and arrived at her house wearing gloves and carrying a knife, indicating he planned to confront her, use the knife, and avoid leaving fingerprints. And he stabbed Doe repeatedly over a

relatively extended period of time, from which the jury could infer deliberation rather than impulsiveness. (See *People v. Perez* (1992) 2 Cal.4th 1117, 1127 [violent and bloody assault resulting in multiple stab wounds can demonstrate premeditation].)

Koromah argues correctly that the jury discounted evidence that his resentment toward Doe came in the course of the "ups and downs" of their contentious relationship; that the initial "poke" to her abdomen was not severe, barely breaking the skin; that the stabbing was part of an altercation; and that Doe escalated the altercation by following him from her house to the street. But the jury's disregard for Koromah's exculpatory evidence was reasonable given that he arrived at Doe's house with gloves on and knife in hand, and immediately put the knife to use by stabbing her in a vital part of her body. Again, it is not for us to reweigh the evidence.

**B. Refusal to Instruct on Attempted Voluntary Manslaughter**

The trial court refused Koromah's request to instruct the jury on the lesser included offense of attempted voluntary manslaughter. Koromah argues the court erred in refusing the instruction because there was evidence—his text messages to Doe and entries in his notebook—from which the jury could reasonably conclude he attacked Doe in a heat of passion based on provocation built up over time. We disagree.

A trial court must instruct on general principles of law relevant to the issues raised in a criminal case. (*People v. Koontz*, *supra*, 27 Cal.4th at p. 1085.) This includes an obligation to instruct on lesser included offenses when substantial evidence raises a question as to whether all elements of the charged offense are present. (*People v. Breverman* (1998) 19 Cal.4th 142,

154.) "Substantial evidence is evidence sufficient to 'deserve consideration by the jury,' that is, evidence that a reasonable jury could find persuasive." (*People v. Barton* (1995) 12 Cal.4th 186, 201, fn. 8.) In the context of lesser included offenses, substantial evidence is evidence from which a reasonable jury could conclude the lesser included offense was committed but the greater offense was not. (*People v. Breverman*, *supra*, 19 Cal.4th at p. 162.) However, "the existence of '*any* evidence, no matter how weak' will not justify instructions on a lesser included offense." (*Ibid*.) The obligation to instruct on a lesser included offense does not arise "when the evidence is 'minimal and insubstantial.' " (*People v. Barton*, *supra*, 12 Cal.4th at p. 201.) "We review de novo a trial court's failure to instruct on a lesser included offense," viewing the evidence "in the light most favorable to the defendant." (*People v. Millbrook* (2014) 222 Cal.App.4th 1122, 1137.)

Homicide is divided into murder and manslaughter. (*People v. Beltran* (2013) 56 Cal.4th 935, 941.) A killing without malice but induced by a sudden quarrel or heat of passion is voluntary manslaughter, a lesser included offense of murder. (*People v. Williams* (1988) 199 Cal.App.3d 469, 475.) Without heat of passion, voluntary manslaughter is unavailable as a lesser included offense. (*People v. Hines* (1997) 15 Cal.4th 997, 1052.)

Voluntary manslaughter on a heat of passion theory has both subjective and objective components. (*People v. Moye* (2009) 47 Cal.4th 537, 549.) "To satisfy the subjective element . . . , the accused must be shown to have killed while under 'the actual influence of a strong passion' " induced by the victim's provocation. (*Id*. at p. 550.) The passion aroused may be any " ' " 'violent, intense, high-wrought or enthusiastic emotion' " '

[citation] other than revenge." (*People v. Breverman*, *supra*, 19 Cal.4th at p. 163.)

To satisfy the objective element, the heat of passion must be a result of sufficient provocation—that is, conduct by the victim "sufficiently provocative that it would cause an ordinary person of average disposition to act rashly or without due deliberation and reflection." (*People v. Moye*, *supra*, 47 Cal.4th at pp. 549-550.) "To be adequate, the provocation must be one that would cause an emotion so intense that an ordinary person would simply *react*, without reflection." (*People v. Beltran*, *supra*, 56 Cal.4th at p. 949.) Both heat of passion and adequate provocation "must be affirmatively demonstrated." (*People v. Lee* (1999) 20 Cal.4th 47, 60.)

Here, no substantial evidence supported a voluntary manslaughter instruction. Even if Koromah subjectively acted under a heat of passion—perhaps induced by simmering resentment over Doe's rejection—there is no evidence of the requisite provocation. Nothing in Koromah's text messages or journal showed a recent quarrel between him and Doe. Given any significant cooling off period, whatever passion of extreme intensity he might have experienced at the time of the attack could have resulted only from his own deliberation and reflection, not from Doe's rejection. Even had Doe's latest rejection occurred recently (which Koromah does not argue and of which there is no evidence), rejection, though painful, is such a common occurrence in personal relationships that an ordinarily reasonable person would at least entertain its possibility, and therefore, when faced with the actuality of rejection, could not be said to act rashly or without due deliberation and reflection.

Given the absence of substantial evidence supporting a heat of passion theory, the trial court correctly refused to instruct on the theory.

**DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.