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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SIX

THE PEOPLE, Plaintiff and Respondent, v. JONATHAN JASON AARON, Defendant and Appellant.	2d Crim. No. B245483 (Super. Ct. No. 2009038888) (Ventura County)

Jonathan Jason Aaron killed Valerie Ankerstrom, the woman whom he characterized as his "soul mate," and without whom he did not wish to live. He was convicted of first degree murder. Appellant contends the verdict would have been no greater than second degree murder if trial counsel's representation had been effective, and met the "objective standard of reasonableness" "under prevailing professional norms." (*Strickland v. Washington* (1984) 466 U.S. 668, 687-688 (*Strickland*).) As he did in his motion for new trial, appellant challenges trial counsel's failure to argue for second degree murder and his failure to further investigate a not guilty by reason of insanity (NGRI) defense. (Pen. Code, § 1026 et seq.)[1] The decisions of trial counsel, however, were based on a deliberate trial strategy predicated on the facts known, and those that should reasonably have been known, to counsel from the inception of the case through

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

and including the verdict. (*People v. Pope* (1979) 23 Cal.3d 412, 425; *People v. Hinton* (2006) 37 Cal.4th 839, 876.) Counsel's strategy resulted in the jury not returning a verdict on the special circumstance allegation which would have resulted in a sentence of life without possibility of parole. Based on our de novo review of the legal issues, and accepting the factual findings of the trial court, we conclude appellant has not established that trial counsel's representation was ineffective. We affirm.

The jury convicted appellant of first degree murder (§§ 187, subd. (a), 189 [count 1]) and unlawful sexual intercourse with a minor (§ 261.5, subd. (c) [count 5]). It found true the allegation that appellant personally used a knife in the murder (§ 12022, subd. (b)(1)), but could not reach a verdict on the special circumstance allegation that the murder was committed while lying in wait (§ 190.2, subd. (a)(15)). The jury also acquitted appellant of assault with a deadly weapon (§ 245, subd. (a)(1) [count 4]) and failed to reach a verdict on false imprisonment and criminal threat charges. (§§ 236, 422 [counts 2 & 3].) After denying appellant's motion for new trial, the trial court sentenced him to state prison for 26 years to life, plus three years.

FACTUAL AND PROCEDURAL BACKGROUND

October 16, 2009, Murder of Valerie Ankerstrom

Ankerstrom and appellant met in 2008 and fell in love. She sometimes stayed with appellant in his bedroom at his mother's Port Hueneme home. They both attended rave parties. When they were apart, appellant and Ankerstrom communicated by telephone, email, and the MySpace social network. Appellant objected to Ankerstrom speaking with other men and dressing like a "slut" (wearing short shorts and tops with spaghetti straps).

In early 2009, Ankerstrom telephoned appellant and broke up with him. He decided to kill himself if she would not make up with him. He took a large kitchen knife and went to speak with her in person. They reconciled. Appellant took her to his home and showed her the knife he would have used to kill himself if they had not made up. At some point they agreed that neither of them would end their relationship without doing so in person.

During September and October 2009, Ankerstrom and appellant were apart for several weeks following a death in her family. On October 15, Ankerstrom told her friend Blare Frelow that she was tired of "being controlled" and wanted to break up with appellant. Frelow and Ankerstrom made plans to go to Port Hueneme with Ankerstrom's cousin, Jessica Taylor, and their friend, Jordana Rataizer, so that Ankerstrom could end the relationship.

On October 16, 2009, Ankerstrom emailed appellant to say they needed to talk. He told her not to come to his house "before the funeral" and said he "want[ed her there] without interruptions." Appellant's 1:27 p.m. email to Ankerstrom asked if she was ending their relationship. She responded that she would be there later that day. Appellant's 7:20 p.m. email to Ankerstrom said, "Don't do this. I love you. My life will be over without you." Minutes later, he changed his mood status on MySpace to "dying."

Rataizer drove Ankerstrom, Frelow and Taylor to Port Hueneme. Ankerstrom was "scared," and "on edge." They arrived at appellant's home between 9:00 and 10:00 p.m. Rataizer parked the car and told Ankerstrom she could spend 30 minutes inside the house. Rataizer said she would honk her car's horn after 30 minutes.

Appellant met Ankerstrom at the front door and let her in. As she walked toward his bedroom, appellant grabbed a large knife from the kitchen. He followed Ankerstrom into his bedroom, placed the knife where it would not "freak her out," and locked the door. They talked, "had sex," and talked more.

After waiting 30 minutes, Rataizer honked her car horn. Five minutes later, she started her car alarm, but Ankerstrom remained inside. Taylor and Rataizer approached and knocked on appellant's front door. About five minutes later, they entered his house. Ankerstrom and appellant were whispering loudly. Appellant said, "You have to give me a reason or an answer," in a voice Taylor described as sounding like "hissing aggression." Taylor knocked on the bedroom door. Appellant responded, "Wait a fucking minute." He sounded angry and said to wait in the car. Taylor told Ankerstrom it was time to go. Ankerstrom answered, "Just wait a minute," and said, "It's cool, dude.

I'm getting my stuff now. I'll be out in a minute." Taylor and Rataizer went outside to wait for her.

Appellant repeatedly asked Ankerstrom how they could "make this work." She just said, "I'm tired of fighting." Appellant knew his relationship with Ankerstrom was "on the line." He was irritated that her friends kept rushing her to leave because "it's really hard to fix something like that when you don't have time." He picked up the knife he had brought from the kitchen. Ankerstrom grabbed it. They struggled over the knife until appellant retrieved it. He started stabbing himself and Ankerstrom.

Taylor and Rataizer heard a "horrifying" scream. Ankerstrom screamed, "No, Jonathan, don't." Appellant said, "I'm sorry, Valerie. I love you, Valerie. My world is over and my life is over and I'm sorry." Appellant's bedroom door remained locked. Taylor and Rataizer called the police. Port Hueneme Police Department Officer Rollen Burns arrived at appellant's home around 10:30 p.m. He found Ankerstrom lying face down on the floor. Appellant's upper torso was bleeding. Appellant's mother, Nevin Aaron, was next to him. Nevin directed Burns to a knife that was on a table. Paramedics arrived and pronounced Ankerstrom dead at 10:48 p.m. They took appellant to the hospital.

Police detectives interviewed appellant at the hospital on October 18, and 19, 2009. He admitted he stabbed Ankerstrom "a lot" of times, and knew it was wrong. He also admitted he sliced her across her throat. He was just "goin' back and forth" between stabbing himself and Ankerstrom. He "knew there was a chance . . . both [he and Ankerstrom] could die." He said he was "one hundred percent responsible," and "[t]here's no excuse whatsoever, it's completely mine – all my doing."

Dr. Robert O'Halloran performed Ankerstrom's autopsy. He testified that there were about 20 deep cuts clustered on her back, and several cuts in her neck, including a long, deep cut that severed her jugular vein. One wound went through her heart, and others pierced her lungs. One 7.5-inch wound extended from Ankerstrom's back, through her body, and pierced the skin below her right breast. Her hands had wounds that appeared to be defensive. Dr. O'Halloran opined that Ankerstrom's back and

neck wounds were intentional. He testified that Ankerstrom's death could have resulted solely from her heart wound, or from multiple wounds.

Victoria K.

February 4, 2008 - April 4, 2008

Unlawful Sexual Intercourse and Related Charges

Appellant met Victoria K. at rave parties in 2007, when they were 24 and 16 years old, respectively. Victoria lived in Torrance with her mother. She and appellant had a romantic, sexual relationship. Appellant objected if Victoria wore revealing clothing or talked with other men.

For several weeks in 2008, Victoria lived with appellant in his locked bedroom. She remained in his bedroom, except when she used the bathroom or they left his home together. In late March, Victoria and appellant argued after he attended a party without her. While she was crying, appellant kicked her. Victoria hit him back and he hit her chest. He apologized to Victoria, said he loved her, and told her he would not hit her again.

On April 4, 2008, while they were in his bedroom, Victoria told appellant she was breaking up with him. He was upset and asked her not to leave. Before Victoria left, appellant used two different knives and a razor blade to cut his wrists. He told her it was her fault he was hurting himself. He also pointed a knife tip at Victoria and said, "I told you you would be mine forever, you would be mine to the end. This is it. This is the end." Appellant dragged the knife tip across Victoria's neck. She thought he would kill her and then kill himself. After the police arrived, appellant allowed Victoria to leave through a window. Victoria left that day, went to Utah, and stayed there for several months.

Motion for New Trial

Following his conviction, appellant retained new counsel who filed a motion for new trial, alleging ineffective assistance of counsel. Appellant's new counsel argued that trial counsel, Deputy Public Defender Russell Baker, failed, among other things, to explore all potentially meritorious defenses; to discuss the factual

circumstances surrounding the killing with appellant; and to discuss all of the plea options with appellant, including an NGRI plea. In his declarations appellant stated that Baker did not discuss the facts surrounding the killing with him, or explain the option to plead NGRI to him.

Baker's testimony was directly to the contrary. Baker testified that he met with appellant on numerous occasions, and spent hours discussing the case and the facts surrounding the killing. Baker testified that appellant always acted as if he understood Baker's communications with him. Baker testified that "the events as [appellant] described them to [him] were in essence identical to what was in his . . . statement[s to the police.]" In speaking with the police, appellant admitted stabbing Ankerstrom "a lot" of times and slicing her throat. He also said he "knew there was a chance [she] could die;" he knew that stabbing her was wrong; and he deserved punishment.

Baker testified that appellant appeared depressed at times, but he was "[a]lways" oriented as to time and place. Baker "repeatedly [asked appellant] throughout [his] relationship [with him]" whether he was having any auditory or visual hallucinations. "Appellant consistently told Baker he had not had any hallucinations." Baker asked appellant whether he had seen mental health professionals or been diagnosed with a mental disorder. Baker obtained records concerning appellant's mental health and interviewed his mother Nevin in her home regarding appellant's history, including his mental health. Baker asked Nevin whether appellant was "disassociated from reality in any way." Nevin told him appellant was depressed but not that he "had any symptoms that would be consistent with perhaps paranoid schizophrenia or anything like that."

Baker explained the multiple plea options to appellant, including the NGRI plea. Baker testified that appellant's statements to the police acknowledging that he stabbed Ankerstrom and knew it was wrong to do so, substantially undermined any NGRI defense. Baker told appellant that Dr. Patrick Barker might be able to assist them with any mitigating mental health issues and to consider whether there was evidence to support an NGRI plea. Baker explained that Dr. Barker would visit him in jail, and

appellant seemed willing to meet with him. Appellant nonetheless refused to discuss his case with Dr. Barker when he went to visit him.

Baker subsequently asked Dr. Katherine (Kay) Emerick to review appellant's statements, mental health records, and police reports, before evaluating appellant "with the view toward the issue of NGRI." Dr. Emerick reviewed those materials and told Baker she did not find support for an NGRI defense, especially in view of appellant's statements to the police. She did not meet with appellant. Baker did not seek another expert. Appellant was very angry about Dr. Barker's visit and it was obvious to Baker that appellant "did not want to have to answer a series of questions about the events of that day [which was consistent] with [Baker's] own experiences trying to interview [appellant] about the experiences of the day [Ankerstrom] died."

Baker testified that he decided "to argue for the manslaughter in hopes that the jurors would then settle on a second, which itself is an indeterminate sentence, but would give him a parole eligibility date." Recognizing "that jurors frequently participate in a horse trading . . . in . . . deliberations, . . . [his] strategic decision was to attempt to low ball them, . . . at manslaughter hoping that they would return a verdict of second-degree." Baker acknowledged that in arguing for manslaughter, and stating there was no malice, he told the jurors that the killing was neither second nor first degree murder. He did not expressly argue the jury should convict appellant of second degree murder if they rejected the manslaughter provocation theory. Baker believed that if he had "directly asked [the jury] to convict [appellant] of second-degree murder, that they would be less likely to do so."

Knowing the prosecution would use the incidents involving Victoria to prove the lying-in-wait special circumstance allegation, Baker's defense strategy was to neutralize that evidence and "undermin[e] Victoria []." He testified, "[w]e beat the special circumstance, and we beat every count pertaining to . . . [Victoria] other than the unlawful sexual intercourse with a minor."

Appellant's new attorneys submitted a report from Dr. Donald D. Hoagland, and called him as a witness at the hearing on the motion for new trial. Dr. Hoagland

opined that appellant suffered from borderline personality disorder, among other conditions. He testified that appellant heard a voice during his attack on Ankerstrom that told him to "finish her off." Dr. Hoagland further testified that appellant did not have a "continuous awareness" of the events surrounding the murder. He opined that appellant was "not aware of the quality or nature of his actions, or if he were, that he could not determine right from wrong." Many of the facts upon which Hoagland based his opinion came to light after the verdict and were contrary to what appellant told investigators immediately after the crime, what was overheard by the witnesses at the time of the killing, and what appellant related to Baker.

The trial court made the following statements in denying the motion for new trial: "I do find that Mr. Baker was credible and persuasive with respect to the defense argument that he did not argue or contest the lack of premeditation. I believe that's factually inaccurate with respect to the exploration of possible mental health defenses. I do believe that Mr. Baker was constantly evaluating the defendant with an eye towards mental defenses and did, in fact, take sufficient steps to have the defendant professionally evaluated. [¶] I did not find the report or the testimony [of] Dr. Hoagland to be especially persuasive based largely on the defendant's post-trial self-reporting. There appeared to me to be no grounds, either statutory or nonstatutory, which leads me to believe that this motion for a new trial should be granted. The motion is therefore denied."

DISCUSSION

Appellant contends that he was deprived of the effective assistance of counsel at trial because his attorney failed to investigate or present an NGRI defense, or present an alternative argument to jurors that there was no evidence of premeditation and deliberation to support a first degree murder verdict. We disagree.

To establish the ineffective assistance of counsel, a defendant must show that his attorney's representation fell below an objective standard of reasonableness under prevailing professional norms, and that he suffered prejudice therefrom. (*People v. Riel* (2000) 22 Cal.4th 1153, 1175; *Strickland, supra,* 466 U.S. at p. 687.) Prejudice is

established by showing that there is a reasonable probability of a more favorable result absent his attorney's shortcomings. (*Ibid*.) "'. . . "A reasonable probability is a probability sufficient to undermine confidence in the outcome." [Citation.]'" (*Ibid*.) A reviewing court may resolve an ineffective assistance of counsel claim by deciding only the question of prejudice. "[A] court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." (*Strickland*, at p. 697.)

In reviewing the denial of a motion for new trial on the ground of ineffective assistance of counsel, we exercise our independent review as to legal questions of counsel's deficient performance and prejudice. (*People v. Taylor* (1984) 162 Cal.App.3d 720, 725.) '"The trial judge is the one best situated to determine the competency of defendant's trial counsel. Where, as here, defendant is represented by different counsel at the motion for a new trial and the issue is called to the trial court's attention, the trial judge's decision is especially entitled to great weight and we defer to his fact finding power.'" (*People v. Callahan* (2004) 124 Cal.App.4th 198, 211.)

Appellant challenges Baker's alleged failure to thoroughly investigate the basis for an NGRI defense. To establish ineffective assistance based on an alleged failure to investigate, a defendant "must prove that counsel failed to make particular investigations and that the omissions resulted in the denial of or inadequate presentation of a potentially meritorious defense." (*In re Sixto* (1989) 48 Cal.3d 1247, 1257.) "[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." (*In re Thomas* (2006) 37 Cal.4th 1249, 1258 [internal quotation marks omitted].)

Baker made reasonable, repeated attempts to assess the viability of an NGRI defense. Before the trial, appellant persistently denied he had experienced auditory or visual hallucinations. He refused to participate in an interview with Dr. Barker. At Baker's request, Dr. Emerick reviewed appellant's medical records, his

statements to police, and other materials. Dr. Emerick concluded, without interviewing appellant that the NGRI defense was not viable, particularly in view of his statements to the police. Those statements indicate he was aware of what he was doing when he stabbed Ankerstrom repeatedly and sliced her throat, and he knew his conduct was wrong. In addition, on the night of her murder, Ankerstrom's friend heard appellant apologize within minutes of her screaming, "No, Jonathan, don't." Appellant said, "I'm sorry, Valerie. I love you, Valerie. My world is over and my life is over and I'm sorry." His apology reflects his awareness of his conduct at the time he attacked Ankerstrom, and his knowledge of its wrongfulness. """. . . In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.""" (*In re Thomas, supra,* 37 Cal.4th at p. 1258.) An attorney's tactical decisions are accorded substantial deference, and are seldom second-guessed on appeal. (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1243, citing *Strickland, supra*, 466 U.S. at p. 689.) We will not second-guess Baker's decision concerning the need for further investigation of the NGRI defense.

Further, appellant has failed to establish that Baker's failure to further investigate the NGRI defense was prejudicial. He claims it was prejudicial because new counsel sought and obtained Dr. Hoagland's opinion that appellant was not aware of his actions during the murder, or if he was, he did not understand they were wrong. Dr. Hoagland's opinion, however, rested on appellant's post-conviction statements, including his claim that he heard a voice during his attack on Ankerstrom that told him to "finish her off." In contrast, before his conviction, appellant had persistently responded "no" when Baker asked if he had ever had visual or auditory hallucinations. His descriptions to Baker of the events surrounding the killing were consistent with his statements to the police. The trial court found that Baker's testimony was credible and that appellant's post-conviction, self-serving statements were not. We accept its findings.

Appellant also argues that Baker was ineffective because he failed to present an alternative argument that the jury should convict him of second degree murder. We disagree. If Baker had argued for second degree murder and succeeded, appellant would have been sentenced to an indeterminate term of 15 years to life for the murder. However, Baker made a tactical decision to seek a manslaughter conviction, which carried a determinate term. Although the manslaughter argument failed, counsel's strategy apparently allowed appellant to avoid a life without possibility of parole sentence, as the jury did not find the special circumstance lying-in-wait allegation was true. The jury also failed to convict appellant of three crimes involving Victoria.

Moreover, appellant has failed to establish counsel's failure to present a second degree argument to the jury was prejudicial. There was overwhelming evidence that the murder was deliberate and premeditated. Long before he stabbed her on October 16, appellant secured Ankerstrom's agreement that she would not break up with him unless she did so in person. When she tried to break up with him on October 16, appellant became "irritated" that her friends were "rushing" her to leave his locked bedroom. He stabbed Ankerstrom repeatedly and killed her, inflicting multiple deep, fatal wounds which we have already described in detail. There is no reasonable probability that the jury would have concluded his murder of Ankerstrom was anything but deliberate and premeditated if Baker had presented an alternative argument seeking a second degree murder verdict.

In sum, the evidence and the express credibility findings of the trial court strongly support the conclusion that appellant's trial counsel was anything but inadequate

in his performance.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

David Hirsch, Judge

Superior Court County of Ventura

Wippert & Bramson, Robyn Bramson for Defendant and Appellant.

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