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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

TRAVIS ROBINSON,

Defendant and Appellant.

B259873

(Los Angeles County
Super. Ct. No. BA403160)

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

Jin H. Kim, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews and David E. Madeo, Deputy Attorneys General, for Plaintiff and Respondent.

Travis Robinson killed Alicia Sibley after an argument about Sibley's infidelity, stabbing her with a knife 59 times in the face, neck, chest, legs and hands, including through a tattoo of "Randall" on her leg—the first name of Sibley's current lover, Randall Hill. At trial Robinson's defense to the charge of first degree murder was that Sibley had provoked him by slapping him and then attacking him with a knife after he confronted her about her relationship with Hill, which he had discovered through Sibley's social media postings. Robinson contended his "mind blanked out" while he was stabbing Sibley and argued he was guilty only of voluntary manslaughter (or, perhaps, second degree murder) because he had acted while provoked or in the heat of passion.

The jury heard evidence of three prior incidents in which Sibley had violently attacked Robinson following arguments about her relationships with other men. Robinson testified in his own defense about the events immediately prior to the death of Sibley, explaining, after he confronted Sibley and she cut him with the knife, he got "mad" and "lost it," recalling those prior incidents when Sibley had attacked him.

The jury convicted Robinson of first degree murder, and he was sentenced to an aggregate indeterminate state prison term of 26 years to life, including a one-year enhancement for use of a deadly or dangerous weapon, a knife, to commit the crime. On appeal Robinson contends his counsel was constitutionally ineffective because she failed to introduce evidence of additional episodes of Sibley's violent conduct. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The People's Evidence

Robinson and Sibley had an off-and-on intimate relationship for nearly 20 years. They had two children together (Sibley also had other children) and lived with each other on three different occasions. They last shared a home from early 2012 to August 2012.

Sibley began dating Hill in May 2012. She moved in with Hill in August 2012. Sibley told one of her adult daughters that she had informed Robinson she was happy with Hill and wanted Robinson to leave her alone. To that end, Sibley did not give Robinson her cell phone number, instead using their daughter Iliana's cell phone to

communicate with him. Robinson similarly contacted Sibley by calling Iliana's phone. Sibley had Hill's first name tattooed on her right leg; Hill got a similar tattoo of Sibley's name.

On the evening of September 24, 2012 Sibley was with Keyana Yarber, another adult daughter, when Robinson called. Sibley put the call on speaker; and Yarber heard Robinson say that he was still crazy about Sibley, that he wanted to commit suicide and that, if he could not have Sibley, nobody else could. Yarber believed Robinson was serious, but described Sibley as having laughed it off and assured Robinson she loved him.

Over the next several days Robinson left Sibley a number of voicemail messages on Iliana's phone, expressing frustration in several of them that Sibley was not returning his calls. In one of his messages Robinson also said he wanted to meet Sibley and had \$500 to give her for their son's birthday. On the morning of September 26, 2012 Sibley told Yarber she was going to meet Robinson later that day so he could give her the money.

At some point shortly before September 26, 2012 Robinson and his close friend Damien Wilson were together with another individual who showed Robinson photographs on one of Sibley's social media sites. Sibley had posted photographs of herself with Hill, whom she described as her "best friend" and "future husband." The men printed several of the photographs, and Robinson took them with him when he went to meet Sibley on September 26.

Sibley and Robinson met in an alley near Slauson Avenue. Sibley arrived in her truck; Robinson by bus. They had sex, as they had previously done in that location, and then argued. Robinson stabbed Sibley repeatedly, placed her body in the back seat of her truck, drove to Wilson's home and eventually left the truck with Sibley's body inside near the intersection of Main Street and East Washington Boulevard.

In a statement to the police following his arrest, Robinson said Sibley had cheated on him numerous times over the years and she had become violent on several occasions

when they argued about it—running over his legs with her car on one occasion, chasing him in her car and shooting at him on another, and attacking him with knives and ice picks on others. On September 26, 2012 Sibley had with her two knives that Robinson had given her for her protection. After they had sex, Sibley said she loved Robinson and denied being unfaithful. Robinson then confronted Sibley with the photographs of her and Hill. According to Robinson, Sibley was outraged and attacked him with one of the knives. Robinson blocked Sibley's attempt to stab him, and the knife fell from her hand. Robinson then lost control, picking up the knife and stabbing her repeatedly. Robinson explained he "didn't realize I was going that crazy, but my mind started thinking about all the stuff that she did to me." He believed he had stabbed Sibley six or seven times and admitted he may have also hit her in the face.

Yarber and Iliana became concerned when they could not reach Sibley throughout the day and evening of September 26, 2012. Around 11:00 p.m. Iliana called Robinson and asked if he had seen Sibley. Robinson said he had not and was going to look for her. When Iliana and Robinson spoke an hour later, Robinson repeated that he had not seen Sibley that day.

The detectives who interviewed Robinson observed a small cut on his nose but no other injuries. When they went to the alley where Robinson said the killing had occurred, the detectives found no blood, no knife and no signs of a struggle. No knife was found in or near Sibley's truck where it was found; there was blood inside and outside the vehicle. According to Yarber, Robinson had given Sibley only one knife, which she kept in her purse. Yarber saw the purse with the knife in it at Sibley's home the day after she was killed.

In a recorded interview with detectives two days after the killing, played for the jury after Wilson testified he did not recall what he had said to them, Wilson said Robinson had driven to his house the night of September 26, 2012 and asked to use Wilson's cell phone to call his son because the battery on his own phone was low. Robinson was outside for about 15 minutes. When he returned, Robinson kept saying,

“She went too far.” Robinson told Wilson he had confronted Sibley using the social media photographs and also said that during their argument he had “poked” (stabbed) Sibley. The following morning Robinson called Wilson and told him he had parked Sibley’s truck near Main Street and Washington Boulevard.

Wilson’s cell phone had three photographs of Sibley’s dead body in the back seat of her truck, which Robinson had taken outside Wilson’s home. In the early morning of September 27, 2012 Wilson showed the photographs to other commuters on the bus he regularly rode and told the driver his friend had killed his “baby mother.” The driver told a retired police officer on the bus, who in turn reported the incident to Los Angeles police detectives. Sibley’s vehicle and her body were found shortly thereafter.

Sibley died from blood loss. She had been stabbed 59 times: 13 stab wounds on her face; 16 to the right side of her neck; seven to the left side of her neck; six to the back of her neck; and 12 to her chest, legs and hands, including a cut through the “Randall” tattoo on her leg and five defensive wounds to her left hand. Sibley also sustained blunt force trauma to her face and head.

The People also introduced evidence that Robinson had two domestic violence convictions (in 1997 and 1999) involving a former girlfriend and testimony from Yarber concerning an incident in 2010 in which Robinson had choked Sibley, who was pregnant at the time, because he was upset she had left him at home to watch Sibley’s other children.

2. Robinson’s Defense

Robinson, testifying in his own defense, said he and Sibley became engaged in 2011 and were still engaged (and dating) in September 2012. Sibley had never told him she was engaged to Hill. When she moved out in August 2012, Sibley told Robinson she and the children were going to her grandfather’s house, not that she was living with Hill.

Robinson described three occasions when Sibley had attacked him. Before 2010 he and Sibley had argued about her infidelity. She hit him in the face with something sharp. The wound became infected, and Robinson went to the hospital for treatment. In

2010 Robinson and Sibley again argued about her infidelity. Robinson told Sibley he was not going to continue to help her financially. As he was walking away, Sibley ran him over with the car and backed the car up and over his leg. Robinson said his leg had been broken, but the prosecutor and defense counsel stipulated he was treated only for knee sprain, ankle sprain and abrasions to his leg. Finally, in 2011 two men with guns came to Robinson's home, one of whom Robinson believed was one of Sibley's lovers. Robinson called Sibley and asked her to bring him a gun. Sibley arrived after the men left; Robinson and Sibley argued; Sibley shot at Robinson while chasing after him in her car. Robinson denied he had choked Sibley while she was pregnant or that he had ever been physically abusive with her.

Robinson's testimony concerning the events surrounding Sibley's death was largely consistent with the statement he gave to detectives after his arrest. According to Robinson, following sex in the alley, he told Sibley he wanted to end their engagement and showed her the photographs of her with Hill. She became angry and started "acting crazy." Sibley tried to grab Robinson and slap him; Robinson pushed her back; she then retrieved a knife from the truck and attacked him, cutting him on his nose, wrist and side. Robinson "lost it," thinking of the previous incidents "when she ran me over and shot at me, stabbed me in the face before. . . . All this stuff was in my mind. And she was trying to do something to me again." Robinson testified he grabbed the knife from Sibley and started swinging it as his mind "blanked out." When he stopped, Sibley was on the ground; and he realized he had gone too far. He said he threw the knife on the ground, picked up Sibley and placed her in the backseat of her truck.

Robinson explained he had intended at this point to turn himself in to an officer he knew, only to remember as he drove toward the police station that the officer had retired. He panicked, fearing other officers would shoot him. He then drove to Wilson's house to borrow Wilson's phone with some photographs he wanted to show his son. Robinson claimed the photographs of Sibley's body had been taken accidentally when he was fumbling with Wilson's phone.

3. The “Omitted Evidence” of Sibley’s Additional Violent Acts

Prior to trial defense counsel advised the court she intended to introduce evidence of the three prior incidents in which Sibley had reacted with violence toward Robinson when the two argued about her infidelity to help establish Robinson’s state of mind when he stabbed Sibley on September 26, 2012. The prosecutor objected, arguing the events, which were all at least two years old, were too remote to constitute provocation for purposes of voluntary manslaughter and the testimony of individuals who had not witnessed the episodes would be inadmissible hearsay. The trial court allowed the evidence.

In the same pretrial conference the prosecutor moved to exclude evidence of several additional incidents of violence reflected in witness statements the parties had exchanged. In 2005 an individual named Chris Miguel saw Sibley kick Robinson out and scream, “If you come in here, I am going to stab you.” Miguel also saw Sibley punch and slap Robinson. In 2006, while in jail, Sibley refused to comply with deputies’ orders and got into a fighting stance when confronted; she was placed in confinement after spitting on another inmate. The prosecutor argued the incidents were not relevant, and the evidence was proffered simply as an attempt to further damage the reputation of the victim. The court indicated its tentative agreement the events were unrelated to Robinson’s claim of provocation because of the passage of time between them and the September 2012 shooting, “This doesn’t sound like things that were occurring that are part of this build up that you are referring to.” Defense counsel did not object to the exclusion of this evidence, stating it was no longer relevant because Robinson was not asserting he had acted in self-defense.

During trial Robinson on two occasions complained to the court that evidence of Sibley’s violent conduct was not being presented to the jury. At the first in camera hearing, conducted during the People’s case-in-chief as a request to replace counsel pursuant to *People v. Marsden* (1970) 2 Cal.3d 118, Robinson discussed Sibley’s assault on her mother in 2012 during which she kicked in a bedroom door while wielding a knife

and potential testimony from correctional officers that Sibley had attacked other inmates while in prison. He expressed his concern that Sibley was being portrayed at trial as an innocent victim, while he was being painted as a monster.

In response the court explained it had already ruled it would allow evidence of prior violent incidents that had occurred between Sibley and Robinson in which Sibley “was the one that attacked you and hurt you. I am allowing the jury to hear that evidence, Mr. Robinson.” But, the court continued, it had a responsibility to limit the scope of the trial: “[J]ust as I am not going to allow the prosecutor to bring in every bad thing that maybe you have ever done to anybody in the history of your life, I am also not going to let every bad act that [Sibley] has done to you or anybody to come in during this trial. Otherwise, we would probably be here until the year 2020 just hearing evidence because I think there is a lot of stuff that could, you know, be brought in. We need to have the jury focus basically on the issues of really what happened on the date when [Sibley] died. But I am going to allow that context in, of the prior violence that was perpetrated allegedly by her against you. So the jury is not going to have this view, sir, of [Sibley] being some kind of an angel or saint or something.” The court added the evidence of Sibley’s violent tendencies in general, as opposed to acts directed toward Robinson, did not appear directly relevant to the issue presented; its probative value was outweighed by its prejudicial impact; and it was, in addition, largely cumulative given the evidence the court had ruled could be introduced.

During the second *Marsden*-type hearing, held toward the conclusion of the trial, Robinson reported he had talked to two lawyers and a police officer from El Segundo who all told him additional evidence of Sibley’s violent conduct, including her actions while in prison, should be permitted at the trial. He again questioned the failure of defense counsel to introduce that evidence. The court explained the individuals advising him, as opposed to his own counsel, “don’t understand the rulings that I have made, the evidence that’s here in this case.”

4. *The Trial Court's Instructions on Murder and Voluntary Manslaughter*

The trial court instructed the jury on the principles of murder and voluntary manslaughter pursuant to CALCRIM Nos. 520, 521, 522, 570 and 571, specifically including an instruction that provocation may reduce a murder from first degree to second degree and may reduce a murder to manslaughter, as well as instructions on heat-of-passion/sudden quarrel voluntary manslaughter and—although not the defense theory—on imperfect self-defense as a form of voluntary manslaughter.¹ The court emphasized, to convict Robinson of murder, it was the People's burden to prove beyond a reasonable doubt that he did not kill as a result of a sudden quarrel or in the heat of passion. Robinson does not contend the trial court's instructions were in any way incomplete or incorrect.

DISCUSSION

1. *Governing Law*

a. *Heat-of-passion/sudden quarrel voluntary manslaughter*

An intentional unlawful homicide is a voluntary manslaughter stemming from a sudden quarrel or heat of passion if the defendant acted through strong passion aroused by a provocation sufficient to cause an ordinary person to act without due deliberation and reflection. (*People v. Breverman* (1998) 19 Cal.4th 142, 163.) This form of voluntary manslaughter has both an objective and a subjective component. Under the subjective component the defendant must actually have killed under the immediate influence of the provocation. Under the objective component the circumstances giving rise to the act must be objectively sufficient to provoke an ordinarily reasonable person to act rashly and without deliberation. (*People v. Enraca* (2012) 53 Cal.4th 735, 759.) No specific type of provocation is necessary; the passion can be anger, rage or any violent or

¹ Robinson does not challenge his counsel's decision not to argue he had killed Sibley in self-defense after she attacked him with a knife or that he had actually, albeit unreasonably, believed that the immediate use of deadly force was necessary to defend against the imminent danger he would be killed by her or would suffer great bodily injury.

intense emotion other than revenge: “To be adequate, the provocation must be one that would cause an emotion so intense that an ordinary person would simply *react*, without reflection. . . . [T]he anger or other passion must be so strong that the defendant’s reaction bypassed his thought process to such an extent that judgment could not and did not intervene.” (*People v. Beltran* (2013) 56 Cal.4th 935, 949; see *People v. Thomas* (2013) 218 Cal.App.4th 630, 645 [even when facts “fit more precisely with a homicide mitigated by imperfect self-defense, . . . they may also show that [defendant] was guilty only of voluntary manslaughter because when he shot [the victim] his passion was aroused and his reason was obscured due to a sudden quarrel”].) The victim, not the defendant, must have initiated the provocation that incited the killing. (*Breverman*, at p. 163; *People v. Carasi* (2008) 44 Cal.4th 1263, 1306.)

b. *The right to effective counsel*

The right to counsel guaranteed by both the Sixth Amendment to the United States Constitution and article I, section 15 of the California Constitution “includes, and indeed presumes, the right to effective counsel. . . .” (*People v. Blair* (2005) 36 Cal.4th 686, 732.) “To establish ineffective assistance of counsel, a defendant must show that (1) counsel’s representation fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel’s deficient performance was prejudicial, i.e., there is a reasonable probability that, but for counsel’s failings, the result would have been more favorable to the defendant.” (*People v. Johnson* (2015) 60 Cal.4th 966, 979-980; accord, *In re Crew* (2011) 52 Cal.4th 126, 150; see *Strickland v. Washington* (1984) 466 U.S. 668, 694 [104 S.Ct. 2052, 80 L.Ed.2d 674].) “The burden of sustaining a charge of inadequate or ineffective representation is upon the defendant. The proof . . . must be a demonstrable reality and not a speculative matter.” (*People v. Karis* (1988) 46 Cal.3d 612, 656; accord, *People v. Vines* (2011) 51 Cal.4th 830, 875.)

There is a presumption the challenged action or inaction “might be considered sound trial strategy” under the circumstances. (*Strickland v. Washington*, *supra*, 466 U.S. at p. 689; accord, *People v. Gamache* (2010) 48 Cal.4th 347, 391; *People v.*

Carter (2003) 30 Cal.4th 1166, 1211.) Moreover, “[i]n reviewing a claim of ineffective assistance of counsel, we give great deference to counsel’s tactical decisions.” (*People v. Johnson, supra*, 60 Cal.4th at p. 980.) In addition, on a direct appeal a conviction will be reversed for ineffective assistance of counsel only when the record demonstrates there could have been no rational tactical purpose for counsel’s challenged act or omission. (*Gamache*, at p. 391; *People v. Anderson* (2001) 25 Cal.4th 543, 569; *People v. Lucas* (1995) 12 Cal.4th 415, 442.)

Finally, in considering a claim of ineffective assistance of counsel, it is not necessary to determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. “‘If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.’” (*People v. Carrasco* (2014) 59 Cal.4th 924, 982, quoting *Strickland v. Washington, supra*, 466 U.S. at p. 697.)

2. *Robinson’s Counsel Was Not Ineffective in Failing To Attempt To Introduce Evidence of Additional Acts of Violence Committed by Sibley*

Robinson contends the excluded or omitted evidence of Sibley’s violent conduct would have tended to prove the objective component of the provocation/heat-of-passion element of voluntary manslaughter, reinforcing Robinson’s testimony that Sibley had initiated the physical confrontation leading to her death by grabbing the knife from her truck and attacking him. He also asserts it was relevant to the subjective component—his my-mind-blanked, out-of-control response to the attack—because, even if he was unaware of those episodes of violence, they lent credibility to the accounts of the three earlier physical attacks on him by Sibley that were permitted. His counsel’s failure to seek the admission of this evidence, including her acquiescence in the prosecutor’s pretrial motion to exclude portions of it, Robinson argues, constituted ineffective assistance, falling well below an objective standard of reasonableness under prevailing professional norms. He further argues there is a reasonable probability he would have obtained a more favorable result—a voluntary manslaughter or second degree murder conviction—had the evidence been admitted.

We agree in part with the initial step in Robinson’s analysis: Evidence of Sibley’s other violent episodes had some marginal probative value to Robinson’s case notwithstanding his counsel’s reasonable tactical decision not to claim Robinson had killed Sibley in self-defense. That is, this evidence had some tendency in reason to prove that Sibley initially assaulted Robinson with a knife and that Robinson was provoked into killing her in response to that attack, which were material disputed facts. (See Evid. Code, § 210.) Because the evidence would have been offered to prove Sibley’s conduct in conformity with her violent character, under Evidence Code section 1103, subdivision (a)(1), that evidence was not made inadmissible by Evidence Code section 1101.

Although the excluded or omitted evidence of violent conduct was not irrelevant or inadmissible character evidence, Robinson did not have an unfettered right to present it at trial. To the contrary, the trial court repeatedly expressed its intention to limit testimony concerning Sibley’s violent conduct to the specific episodes addressed in defense counsel’s pretrial motion, which were the events that Robinson said flashed through his mind when Sibley once again attacked him on September 26, 2012; and it had broad discretion under Evidence Code section 352 to exclude additional evidence it deemed collateral, cumulative or unduly time consuming. (See *People v. Pride* (1992) 3 Cal.4th 195, 235 [“trial court has broad discretion to exclude evidence it deems irrelevant, cumulative, or unduly prejudicial or time-consuming”]; *People v. Mincey* (1992) 2 Cal.4th 408, 439 [cumulative evidence may be excluded under Evidence Code § 352]; see also *People v. Shoemaker* (1982) 135 Cal.App.3d 442, 450 [in homicide case where self-defense was raised, excluding additional evidence of victim’s violent character as cumulative did not constitute an abuse of discretion].)

Given the court’s statements at the pretrial hearing at which it first considered, and ultimately granted over the prosecutor’s objection, defense counsel’s motion to permit evidence of Sibley’s three attacks on Robinson, on this record the decision not to oppose the prosecutor’s motion to exclude testimony concerning additional episodes of violence

appears to have been a reasonable tactical decision. Moreover, nothing in the record suggests an objection by counsel would have had any effect on the court’s decision to exclude the evidence, a ruling, as discussed, that was well within the trial court’s discretion under Evidence Code section 352. (See *People v. Solomon* (2010) 49 Cal.4th 792, 843, fn. 24 [“[t]he Sixth Amendment does not require counsel to raise futile motions”]; accord, *People v. Memro* (1995) 11 Cal.4th 786, 834 [“[t]he Sixth amendment does not require counsel “to waste the court’s time with futile or frivolous motions””].)

Similarly, when during trial Robinson again raised questions about the admissibility of additional incidents of violence by Sibley, the court reiterated its intention to limit such evidence and not to permit marginally relevant, cumulative or time-consuming evidence concerning the victim’s character. Defense counsel’s focus on the three specific prior occasions when Sibley allegedly attacked Robinson while they argued about her infidelity, rather than the full array of violent episodes from Sibley’s past, was an appropriate trial strategy and was, moreover, one the trial court would have imposed if not voluntarily elected. The decision not to seek admission of all this evidence did not constitute the ineffective assistance of counsel.

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

SEGAL, J.

BLUMENFELD, J.*

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