Filed 2/4/13 P. v. Pedraza CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. JONATHAN PEDRAZA, Defendant and Appellant.	B239967 (Los Angeles County Super. Ct. No. KA091828)

APPEAL from a judgment of the Superior Court for Los Angeles County, Mike Camacho, Jr., Judge. Affirmed.

Landra E. Rosenthal, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Michael R. Johnsen and Idan Ivri, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Jonathan Pedraza appeals from a judgment sentencing him to prison for a determinate term of three years, followed by an indeterminate term of 27 years to life, after a jury convicted him of first degree murder (Pen. Code,[1] § 187, subd. (a)), felony vandalism (§ 594, subd. (a)), and two misdemeanor counts of hit-and-run driving (Veh. Code, § 20002, subd. (a)). He contends the trial court erred by failing to instruct the jury on second degree murder or voluntary manslaughter based upon heat of passion or provocation, and that there was insufficient evidence to support the jury's finding of premeditation and deliberation. We affirm the judgment.

BACKGROUND

On August 31, 2010, Miguel Pedraza (defendant's father) and his live-in partner, Lorna Lualhati, drove in Lualhati's car, a beige Toyota, to pick up defendant from a gas station and take him to the house in which he rented a room. During the drive, defendant told Miguel he wanted to go to a storage unit that Miguel had rented, in order to pick something up. Miguel and defendant's mother had rented the storage unit to store defendant's possessions. Miguel told defendant they could not go there at that time, because the facility had closed for the day, but they made plans to go on another day.

The storage unit that Miguel rented was at A-1 Storage in Irwindale. There are 999 units at the facility; Miguel rented unit 824. To enter or exit the facility, a renter must enter on a keypad a seven-digit code specific to his or her unit, which opens a gate. The renter may then drive into the facility and to his or her unit, which is secured by a padlock. Anytime someone enters or exits the facility, the time and the unit associated with the code entered on the keypad is automatically

[1] Further undesignated statutory references are to the Penal Code.

recorded on an activity log in the facility's computer system. The facility also has video cameras that record activity at the front entrance/exit and down each aisle of units.

The activity log shows that at 3:57 p.m. on September 3, 2010, someone entered the facility by entering the code for unit 824. The video recording associated with that time shows Lualhati's car, driven by Miguel, entering the facility and driving down the aisle to unit 824; it took about three minutes from the time the gate opened until the car got to the unit. Ten minutes after the car entered, the same car pulled up to the gate and honked.

Haide Sanchez, the manager of the facility, was working in the office at that time, along with another employee, Jose Chavez. Sanchez heard the honking but ignored it, thinking it was a new customer who forgot he had to enter the code on the keypad to open the gate. She then saw the car pulling up next to the office door, and saw a man she subsequently identified as defendant exit the car from the driver's side; there was no one else in the car. Defendant walked up to the door and asked Sanchez to let him out. She asked him how he got in, and told him he needed to use his code to get out. He said that he did not know the code, and again asked Sanchez to let him out, saying he needed to go. He continued to ask to be let out for a few minutes, then left the office. He got into the car, backed the car up, then rammed the car into the gate and drove off.

Ryan Moat, who was driving south on Irwindale Avenue near the facility, saw a car race out of the facility, and had to swerve to avoid being hit. He followed the car and called A-1 Storage, thinking that the person driving the car may have stolen something from the facility. He provided the person who answered the phone with the car's license plate number.

In the meantime, Maria Escarcega was in her truck, stopped at a stop sign when she heard a screeching sound. She looked in her rearview mirror and saw

that a white Chrysler had been hit by a beige Toyota, and the Toyota was driving in her direction, but in the opposite lane of traffic. The Toyota made a right turn in front of her, hitting her car, and continued driving down Ramona Boulevard. Escarcega followed the Toyota, which was being driven by a man she subsequently identified as defendant. As defendant turned left onto Main Street, he lost control of the car, which came to a stop in front of a senior home. He got out of the car, jumped over the gate to the senior home, and went up the steps toward the roof.

Escarcega called 911 while she was following the car, and the police arrived within minutes after defendant got out of the car. Officer Ruben Guerrero of the Baldwin Park Police Department was the first officer to respond. He spoke with Escarcega, as well as Lewas Dellgad. Dellgad was driving the first car that defendant hit. He had been exiting a parking lot at 14519 Ramona Boulevard when defendant crashed into the driver's side of his white rental car. He saw that a woman in a truck started to chase the car that hit him, and he followed it. He did not go fast, and by the time he arrived at the senior home (which was across from the police station), Officer Guerrero was already there. After Officer Guerrero spoke to him, the officer jumped over the fence to the senior home and searched the area. He found defendant on the rooftop and arrested him for hit-and-run driving and vandalism.

In the meantime, Officer Diego Cornejo of the Irwindale Police Department responded to a call of possible vandalism at A-1 Storage. When he arrived, Haide Sanchez gave him the license plate number of the car that had rammed through the gate about 20 minutes earlier. He ran the number, and determined the car was registered to Lorna Magsanoc Lualhati. When the dispatcher told him that the car was involved in a hit-and-run collision in Baldwin Park, Officer Cornejo took Sanchez to Baldwin Park for a field identification of the suspect. Sanchez

identified defendant as the person who drove the car through the gate at A-1 Storage.

Within approximately a half an hour after the police arrived at A-1 Storage, one of the officers asked Jose Chavez to check to see if there was any damage to any of the storage units at the facility. Chavez went up and down the aisles, and saw that the door to unit 824 was open a little bit from the bottom. He opened it a bit more, and a body "popped out." He immediately returned to the office and told the police officer there.

Jill Licht, a senior criminalist with the Los Angeles Sheriff's Department, was called to the scene at A-1 Storage to document and collect evidence. When she got to unit 824, she saw that the door was lifted and the body of the deceased victim, Miguel Pedraza, was inside the unit. There were blood stains on the ground, the walls, and some of the items inside, including a barbell or dumbbell.

Raffi Djabourian, a senior deputy medical examiner for the Los Angeles County Department of Coroner, conducted an autopsy on the body of Miguel Pedraza. He found there were 10 lacerations on Miguel's head and face, internal head trauma, and numerous skull fractures that were consistent with being hit in the head with a dumbbell or other heavy object, as well as wounds on his right hand and the inside of his left forearm that were consistent with defensive wounds. He concluded that the injuries had to have been caused by at least five, and probably six, blows to the head, and that the cause of death was blunt head trauma.

Defendant was charged by information with one count of murder (§ 187, subd. (a)), with a special allegation that he personally used a deadly weapon (a dumbbell) (§ 12022, subd. (b)(1)), one count of vandalism over $400 (§ 594, subd. (a)), and two counts of hit-run driving (Veh. Code, § 20002, subd. (a)). The information also alleged a prior prison term under section 667.5, subdivision (b).

The jury found him guilty on all counts. As to the murder count, the jury found the murder was willful, deliberate and premeditated in the first degree and that he personally used a deadly weapon in its commission. Defendant waived jury trial on the prior prison term allegation, and admitted the allegation.

On count 1, the trial court sentenced defendant to an indeterminate prison term of 25 years to life for first degree murder (§§ 187, subd. (a), 190, subd. (a)), plus one year for use of a deadly weapon (§ 12022, subd. (b)(1)) and one year for the prior prison term (§ 667.5, subd. (b)). In addition, the court imposed a determinate term of three years (the high term) on count 2, the vandalism count, consecutive to count 1, and six months each for counts 3 and 4, concurrent with each other and concurrent with count 2. Defendant timely filed a notice of appeal from the judgment.

DISCUSSION

Defendant raises two issues on appeal. First, he contends there was sufficient evidence presented at trial from which a reasonable jury could conclude that the homicide was committed in the heat of passion, and therefore the trial court erred by failing to instruct the jury on voluntary manslaughter as a lesser included offense of murder and on the effect of provocation in reducing the homicide from first degree to second degree murder. Second, he contends there was insufficient evidence of premeditation and deliberation to support the jury's finding that the murder was in the first degree. We are not persuaded by either contention.

A. *The Trial Court Did Not Err By Omitting Instructions*

Defendant contends the trial court erred by failing to instruct on the lesser included offense of voluntary manslaughter based upon heat of passion and on the effect of provocation on the degree of murder. We disagree.

"Where an intentional and unlawful killing occurs 'upon a sudden quarrel or heat of passion' (§ 192, subd. (a)), the malice aforethought required for murder is negated, and the offense is reduced to voluntary manslaughter -- a lesser included offense of murder. [Citation.] Such heat of passion exists only where 'the killer's reason was actually obscured as the result of a strong passion aroused by a "provocation" sufficient to cause an "'ordinary [person] of average disposition . . . to act rashly or without due deliberation and reflection, and from this passion rather than from judgment.'"' [Citation.] . . . [¶] In a related vein, the '"existence of provocation which is not 'adequate' to reduce the class of the offense [from murder to manslaughter] may nevertheless raise a reasonable doubt that the defendant formed the intent to kill upon, and carried it out after, deliberation and premeditation"' -- an inquiry relevant to determining whether the offense is premeditated murder in the first degree, or unpremeditated murder in the second degree. [Citations.]" (*People v. Carasi* (2008) 44 Cal.4th 1263, 1306.)

The trial court is required to instruct the jury on """general principles of law relevant to the issues raised by the evidence."""" (*People v. Avila* (2009) 46 Cal.4th 680, 704.) This includes a duty to instruct on lesser included offenses if the evidence warrants it (*People v. Licas* (2007) 41 Cal.4th 362, 366), but only where there is substantial evidence to support the instruction (*People v. Avila*, *supra*, 46 Cal.4th at p. 705). Here, there was no evidence of any provocation by Miguel. Indeed, defendant's trial counsel admitted as much during discussions the trial court had with the parties regarding the jury instructions.

During those discussions, the court asked counsel what evidence there was to show that there was some provocation such that defendant's conduct was a reasonable reaction to it. Counsel responded that, given the short amount of time during which the murder took place, it was obvious that something happened, and there must have been some reason for it. But she admitted, "We don't know what the reason is. That is absent from the record." She was correct. Because there was no evidence about what caused defendant to hit Miguel in the head with a dumbbell, a juror could find that Miguel provoked defendant's reaction only through speculation. But "'speculation is not an appropriate basis for instructions since it is not evidence.'" (*People v. Chambers* (1982) 136 Cal.App.3d 444, 456.) Therefore, the trial court did not err by omitting instructions on voluntary manslaughter or the effect of provocation on the degree of murder.

B. *There Was Sufficient Evidence of Premeditation and Deliberation*

Defendant contends there was insufficient evidence to support the jury's finding that the murder was premeditated and deliberate. We disagree.

"In assessing the sufficiency of the evidence supporting a jury's finding of premeditated and deliberate murder, a reviewing court considers the entire record in the light most favorable to the judgment below to determine whether it contains substantial evidence -- that is, evidence which is reasonable, credible, and of solid value -- from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] When the circumstances reasonably justify the jury's findings, a reviewing court's opinion that the circumstances might also be reasonably reconciled with contrary findings does not warrant reversal of the judgment." (*People v. Mendoza* (2011) 52 Cal.4th 1056, 1068-1069.)

"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.] '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 reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly. . . ." [Citations.]' [Citation.]" (*People v. Koontz* (2002) 27 Cal.4th 1041, 1080.)

In *People v. Anderson* (1968) 70 Cal.2d 15, the Supreme Court "identified three types of evidence -- evidence of planning activity, preexisting motive, and manner of killing -- that assist in reviewing the sufficiency of the evidence supporting findings of premeditation and deliberation." (*People v. Mendoza*, *supra*, 52 Cal.4th at p. 1069.) But the Court made clear "that '"*Anderson* did not purport to establish an exhaustive list that would exclude all other types and combinations of evidence that could support a finding of premeditation and deliberation." [Citations.]' [Citation.]" (*Ibid.*)

In the present case, there was evidence from which a reasonable jury could conclude that defendant had planned the murder. Lualhati testified that Miguel and defendant made plans to go to the storage unit on August 31, 2010, three days before the murder. She also testified that the items in the storage unit belonged to defendant. The jury reasonably could infer that defendant knew that his dumbbell probably was in the storage unit, and asked Miguel to take him there so he could commit the murder in the unit and out of the view of witnesses. (See, e.g., *People v. Mayfield* (1997) 14 Cal.4th 668, 768 [fact that defendant took victim to location where no witnesses were likely to observe him suggests planning].)

The manner of killing also supports the jury's finding of premeditation and deliberation. The deputy medical examiner testified that Miguel's injuries were caused by at least five, and probably six, blows to the head with a heavy object. A

reasonable jury could conclude that, by hitting Miguel *repeatedly* in the most vulnerable part of his body, defendant made a cold, calculated decision to kill his father. Therefore, we conclude there was sufficient evidence to support the jury's conclusion that the murder was premeditated and deliberate.

DISPOSITION

The judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.