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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.

FELTON LADELL HUMPHRIES,
JR.,

Defendant and Appellant.

B279983

(Los Angeles County
Super. Ct. No. VA141616)

APPEAL from a judgment of the Superior Court of Los Angeles County. Henry J. Hall, Judge. Affirmed.

Thomas T. Ono, 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, Senior Assistant Attorney General, Michael C. Keller and John Yang, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant Felton Humphries guilty of the first degree murder of his wife, assault with a deadly weapon of his infant daughter, resisting a peace officer, and interference with a police animal. On appeal, Humphries argues: (1) the evidence was insufficient to support the first degree murder and assault with a deadly weapon convictions; (2) the court erred in refusing to give an imperfect self-defense jury instruction; and (3) the court's denial of his motion for a continuance to retain private counsel violated his constitutional right to be represented by his chosen counsel. We find no merit in these claims and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

We summarize the evidence in accordance with the usual rules on appeal. (*People v. Virgil* (2011) 51 Cal.4th 1210, 1263.)

I. Prosecution's Case

A. Witness Testimony

Humphries and Alicia W. married in July 2015. They had one child together, R.H., who was born in October 2015. Alicia had a daughter, R.W., from another relationship.

On April 3, 2016, at 6:36 p.m., Alicia's brother, Jared W., received an S.O.S. text message from Alicia's phone stating "I need help."¹ Over the next half hour, he received multiple emergency audio messages of Alicia and Humphries arguing, and Alicia pleading with Humphries. Jared went to Alicia's apartment and knocked on the door, but no one answered. Jared then received a phone call from Alicia stating she was at their mother's house. He noticed someone trying to look out the

¹ Alicia had an app on her phone that, when activated, would send her location and a text message of "I need help" to a designated phone number.

apartment's living room window, so he went to the side of the apartment to avoid being seen. Jared called his mother and confirmed Alicia was not there. While on the phone with his mother, Jared received a text message from Alicia stating, "I'm Ok." Shortly thereafter, at 7:06 p.m., Jared received another S.O.S. message, as well as a blurry photo of Humphries standing over the phone. Jared placed his ear against the door and heard a baby crying and a woman screaming. Jared broke down the apartment door, and found Alicia and R.H. in the bathroom. R.H. had a large cut on her right side, and Alicia was in the bathtub in the fetal position with many cuts. R.W. came out of the bedroom and said, "He cut my mommy." When police arrived, Alicia told them Humphries did this to her. She fell unconscious and eventually died from her injuries.

Around the time the police arrived, two neighbors came across Humphries in the apartment's parking lot. Humphries crawled up to them and stated, "They killed my wife and they're attacking me." When the neighbors offered to take him to the police, Humphries hobbled away through the parking lot gate.

Police officers, with the assistance of a police dog, found Humphries hiding in bushes near the apartment. When Humphries refused to exit the bushes, an officer deployed the dog and it bit Humphries on his left forearm. Humphries tried to choke the dog and pinned it to the ground. The officers eventually pulled Humphries out of the bushes and handcuffed him. Humphries had a large, open wound on his arm where he was bit by the dog. The wound was consistent with a dog bite where the person is trying to pull his arm out of the dog's mouth. The officers searched for, but did not locate a knife.

B. Physical Evidence

An autopsy revealed that Alicia suffered 23 sharp force injuries, consisting of 12 stab wounds and 11 incisional wounds. She had stab wounds to her face, neck, arms, hand, shoulder, elbow, thigh, and hip, ranging between 1.5 and 5 inches in depth. The stab wounds to the neck and thigh struck arteries and were fatal. Alicia had incisional wounds to her head, face, neck, arms, fingers, wrist, and knee. Alicia also had bruises over her left eyelid, an abrasion at the left temporal area, a small laceration on her eyelid, and a laceration on her left arm.

R.H. suffered a three inch stab wound to her abdomen with evisceration of her small bowel and colon. The stab wound injured her liver and kidney. R.H. underwent emergency surgery, and recovered from her injuries.

A crime scene investigator discovered a knife was missing from the knife block in the kitchen. It was never located.

In the children's bedroom, there were numerous bloodstains on the floor, the closet, a dresser, and the ceiling. There were bloodstains on the wall above the closet in a castoff pattern, extending more than seven feet in height, which was consistent with movement of a bloody weapon. There were bloodstains on the bathroom door, floor, walls, and toilet, and a blood-soaked washcloth in the sink. There were numerous bloodstains in and around the bathtub, and a "defect" in the shower wall that could have been caused by a sharp object.

C. Humphries's Interviews with Detectives

During his first interview with a detective, Humphries stated Alicia grabbed a knife during an argument. They "tussled" over the knife in the bathroom, and R.H. was stabbed. Humphries could not remember who stabbed her. After he

grabbed R.H., Humphries blacked out and could not remember anything other than jumping out the window. Humphries theorized that Alicia may have stabbed herself.

During a subsequent interview with detectives, Humphries stated he pushed Alicia in the children's bedroom, and she fell a couple times and was bleeding. Alicia grabbed a knife from the kitchen, and they continued arguing in the bathroom. Alicia had the knife in one hand and was holding R.H. in her other arm. They stopped fighting when they heard Alicia's brother banging on the door, and they both calmed down. Alicia then came at Humphries again while holding the knife, but was not trying to stab him or thrust the knife at him. Humphries pushed Alicia, she fell into the tub, and R.H. "got stabbed." Alicia got out of the tub and started coming at Humphries again, but was not swinging the knife. According to Humphries, she was lunging and "jumping at me like back up type thing." As they tussled over the knife, Humphries grabbed it, "jerked" down, and it struck Alicia in the leg. Humphries believed he would be blamed, so he jumped out the window. Humphries could not explain how Alicia had other stab wounds, and denied physically grabbing the knife and stabbing her.

Humphries stated he had an injury on his arm from the police dog, two gashes on the palm of his right hand, and a gash on his pinky finger. Humphries did not know how he injured his hand, but stated it could be the grass, the dog, or the house. He stated he did not receive any stitches for his wounds.

D. Prior Incidents of Domestic Violence

In November 2006, Humphries had an argument with his then-girlfriend, L.S., and threatened to kill her while holding a large kitchen knife. In February 2007, Humphries and L.S. had

another argument, and he punched her head with a closed fist. Humphries pleaded no contest to a misdemeanor for corporal injury of a girlfriend.

In 2009, Humphries had an argument with his then-wife, T.G., when she indicated she wanted to end the marriage. Humphries told her to give him her wedding ring or he would cut her finger off and take it. Later, Humphries put a knife to T.G.'s throat and threatened to kill her. Humphries then stabbed a closet door 10 to 15 times, and cut his finger in the process. Humphries was convicted of a felony for assault with a deadly weapon.

On February 1, 2016, Alicia called 911 and reported that Humphries left the house with R.H. after punching her in the head several times and holding a knife to her throat for a half hour. Humphries threatened to send someone to kill Alicia's mother and brother, and said he would kill R.H. if Alicia called the police. After leaving the house, Humphries sent Alicia a text message stating, "Game on."

II. Defense Case

A. Humphries's Testimony

Humphries testified in his own defense. According to Humphries, a few weeks after R.H. was born, Alicia punched him in the mouth during an argument. Later that night, Alicia stated she wanted Humphries dead and punched him again.

In February 2016, Humphries and Alicia had another fight, during which Alicia grabbed a knife from the kitchen and confronted Humphries in the bedroom. Humphries tried to grab the knife, and they struggled over it for 10 seconds until interrupted by Humphries's sister.

On April 2, 2016, Humphries and Alicia had an argument about his failure to get a life insurance policy. The next evening, Alicia was upset, telling Humphries that he did not care about R.W. Humphries went to the large bedroom, and Alicia followed him holding a knife and stated, “This is the last time you will ever have this argument with me,” or something to that effect. Humphries went into the children’s bedroom to collect clothes, as he intended to leave the apartment with the children. Alicia grabbed Humphries, and he pushed her away a few times. Alicia fell and had scrapes on her head and finger that were bleeding. Alicia was shaking her hand, causing a lot of blood to come off it.

Alicia went to the bathroom to wash her hand. Humphries heard Alicia on the phone, saying, “I’m at mom’s house with [R.W.]. We’re watching [R.W.].” Humphries grabbed the phone and took a picture of himself, knowing that it would be sent with the S.O.S. app. He sent the photo so that Jared would know he was there and to try to defuse the situation.

At some point, Alicia and Humphries went into the bathroom, and Alicia was holding R.H. in one arm and the knife in the opposite hand. Alicia swung the knife, which gashed Humphries’s hand. Alicia backed up, lost her balance, and fell into the bathtub. In the process, the knife stabbed R.H. in the back. Humphries grabbed R.H. and pulled the knife out of her and threw it. As he was placing R.H. on the ground, Alicia grabbed the knife and swung at him, stabbing him in the arm multiple times. Humphries “connected” with the knife during one swing, and pushed it into her leg. Alicia continued to swing at Humphries with the knife. Humphries knocked the knife out of her hand and grabbed it. As Alicia punched and kicked Humphries, he swung the knife to get Alicia away from him.

Humphries was “genuinely afraid” for his life because he did not know how serious his injuries were or how much blood he was going to lose.

Humphries heard banging on the door and someone yelling to open up, and suspected it was Jared. Humphries decided to escape out the window to avoid the person at the door, and to try to get help for R.H.

Humphries said Alicia caused him to suffer five or six stab wounds and some scratches to his left arm. Alicia also caused him to suffer a stab wound, scratches, and lacerations on his hand.

Humphries testified that he did not tell the detectives that Alicia attacked him because they “didn’t seem interested that [he] was a victim.” He was also concerned that, if he told them Alicia attacked him, she would go to jail and R.H. would end up in foster care.

B. Humphries’s Wounds

Humphries’s expert, physician Paul Bronston, reviewed several photographs showing cuts to Humphries’s hand. Dr. Bronston opined that the cuts were caused by a sharp object, but could not say how they were inflicted. Dr. Bronston also examined several photographs showing six lacerations to Humphries’s arm, although the age of the wounds was unknown and the photographs showed the wounds at different stages of the healing process. Dr. Bronston opined that the lacerations were likely caused by a sharp object, and probably not by a dog bite.

C. Other Evidence

Humphries's sister, Andrea Humphries, testified that, in 2014, Alicia grabbed a knife from the kitchen and told Humphries to hand her R.H. Alicia eventually put the knife down on her own.

In February 2016, Andrea walked in on Humphries and Alicia in their bedroom "tussling" over a kitchen knife. The knife cut Alicia's hand, and she let go. Humphries took the knife and stabbed it into the bed.

Humphries called three character witnesses with whom he had past romantic relationships. None of the witnesses had been abused by Humphries, and they described Humphries as peaceful.

III. Verdict and Sentencing

A jury convicted Humphries of first degree premeditated murder (Pen. Code, § 187, subd. (a)),² resisting a peace officer (§ 148, subd. (a)), interference with a police animal (§ 600, subd. (b)), and assault with a deadly weapon (§ 245, subd. (a)(1)). The jury also found true a deadly weapon allegation and a great-bodily-injury enhancement allegation. The court found Humphries suffered a prior strike conviction and a prior serious felony conviction. He was sentenced to 75 years to life and ordered to pay various fines and penalties.

Humphries timely appealed.

² All further unspecified section references are to the Penal Code.

DISCUSSION

I. Sufficient Evidence Supported the First Degree Murder and Assault with a Deadly Weapon Convictions

Humphries contends there was insufficient evidence to support the first degree murder and assault with a deadly weapon convictions. We disagree.

A. Standard of Review

“To determine whether sufficient evidence supports a jury verdict, a reviewing court reviews the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable jury could find the defendant guilty beyond a reasonable doubt.’ [Citation.]” (*People v. Smith* (2014) 60 Cal.4th 603, 617.) “[I]t is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness’s credibility for that of the fact finder. [Citations.]” (*People v. Jones* (1990) 51 Cal.3d 294, 314.)

This standard of review applies to claims involving both direct and circumstantial evidence. “We “must accept logical inferences that the jury might have drawn from the circumstantial evidence. [Citation.]” [Citation.] “Although it is the jury’s duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant’s guilt beyond a reasonable doubt. [Citation.]” [Citation.] Where

the circumstances reasonably justify the trier of fact's findings, a reviewing court's conclusion the circumstances might also reasonably be reconciled with a contrary finding does not warrant the judgment's reversal. [Citation.]' [Citation.]" (*People v. Manibusan* (2013) 58 Cal.4th 40, 87.)

B. First Degree Murder

Humphries contends there was insufficient evidence showing planning activity, motive, and manner of killing to support findings of premeditation and deliberation.³ We disagree.

Humphries was convicted of first degree murder under the theory that the killing was deliberate and premeditated. (See § 189.) Deliberation “ ‘refers to careful weighing of considerations in forming a course of action; “premeditation” means thought over in advance.’ ” (*People v. Solomon* (2010) 49 Cal.4th 792, 812.) Premeditation and deliberation do not require any specific length 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 other with great rapidity and cold, calculated judgment may be arrived at quickly, but the express requirement for a concurrence of deliberation and premeditation excludes . . . those homicides . . . which are the result of mere unconsidered or rash impulse hastily executed.’ [Citations.]”

³ We reject Humphries's suggestion that we are limited to considering evidence and inferences expressly cited by the prosecutor in her closing argument. Our task on appeal is to determine whether there was sufficient evidence from which the jury could have convicted Humphries of first degree murder. Because the jury was not limited in its consideration to evidence and inferences cited by the prosecutor in her closing statement, neither are we.

(*People v. Velasquez* (1980) 26 Cal.3d 425, 435, overruled on another ground by *People v. McKinnon* (2011) 52 Cal.4th 610; see *People v. Solomon*, *supra*, at p. 812.)

In *People v. Anderson* (1968) 70 Cal.2d 15 (*Anderson*), the California Supreme Court identified three types of evidence commonly shown in cases of premeditated and deliberate murder: (1) planning activity; (2) motive; and (3) manner of killing. (*Id.* at pp. 26–27.) “The goal of *Anderson* was to aid reviewing courts in assessing whether the evidence is supportive of an inference that the killing was the result of preexisting reflection and weighing of considerations rather than mere unconsidered or rash impulse.” (*People v. Perez* (1992) 2 Cal.4th 1117, 1125.) “*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.” (*Ibid.*; see *People v. Solomon*, *supra*, 49 Cal.4th at p. 812.) Thus, the *Anderson* factors are “not prerequisites for proving premeditation and deliberation, nor must the factors ‘be present in some special combination or . . . be accorded a particular weight.’” [Citations.]” (*People v. Shamblin* (2015) 236 Cal.App.4th 1, 10, fn. 16.)

Although not required, there was evidence supporting all three *Anderson* factors in this case. The jury could have reasonably inferred from the evidence that Humphries killed Alicia in the bathroom using a knife he took from the kitchen. The fact that Humphries took a knife from one room to use in another was indicative of planning. (See *People v. Sanchez* (1995) 12 Cal.4th 1, 34 [leaving argument to obtain knife from kitchen was evidence of planning activity]; see also *People v. Perez*, *supra*, 2 Cal.4th at p. 1126 [“[e]vidence of planning activity is shown by

the fact that defendant did not park his car in the victim's driveway, he surreptitiously entered the house, and he obtained a knife from the kitchen"].) The jury also could have found that before he fatally wounded Alicia, Humphries either forced or convinced her to make a phone call and send a text message to try to persuade Jared to leave the apartment. This shows Humphries took active steps to prevent someone from coming to Alicia's aid while he killed her, which is a form of planning activity.

Although not overwhelming, there was also evidence of motive. There was evidence that Humphries and Alicia had multiple arguments the night before and the day of the killing. The jury could have reasonably inferred that Humphries killed Alicia in response to these arguments, especially given his history of using violence and threats of violence in response to arguments with his significant others. (See *People v. Kovacich* (2011) 201 Cal.App.4th 863, 893 ["evidence showing 'quarrels, antagonism or enmity between an accused and the victim of a violent offense is proof of motive to commit the offense'"]; *People v. San Nicolas* (2004) 34 Cal.4th 614, 668 ["[e]vidence tending to establish prior quarrels between a defendant and decedent and the making of threats by the former is properly admitted . . . to show the motive and state of mind of the defendant'"].)

In addition, the manner and circumstances of the killing strongly indicate it was not simply a rash outburst of emotion. Based on the timing of the S.O.S. messages and location of the blood stains, the jury could have reasonably inferred that the entire attack lasted more than 30 minutes and spanned multiple rooms. There was also evidence from which the jury could have found that Humphries momentarily paused the attack to try to

persuade Jared to leave. Such evidence indicated the attack was sustained in duration, which allowed sufficient time for Humphries to reflect on his actions. Regardless, even if the killing occurred quickly, the moments between each of the 23 stab and slice wounds provided sufficient time for reflection. (See *People v. Thomas* (1945) 25 Cal.2d 880, 900–901 [“[t]houghts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly”]; *People v. San Nicolas, supra*, 34 Cal.4th at pp. 658–659 [multiple stabs wounds, many of which were individually fatal, supported finding of deliberation].)

C. Assault with a Deadly Weapon

Humphries asserts the assault with a deadly weapon conviction should be overturned because a reasonable person would not have known that R.H. could be stabbed as a direct and probable result of his conduct. We disagree.

Assault with a deadly weapon is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another with a deadly weapon. (§§ 240, 245, subd. (a)(1).) Assault is a general intent crime without a requisite specific intent to injure the victim. (*People v. Williams* (2001) 26 Cal.4th 779, 784; *People v. Colantuono* (1994) 7 Cal.4th 206, 214 [“the prosecution need not prove a specific intent to inflict a particular harm”].) “[A]ssault only requires an intentional act and actual knowledge of those facts sufficient to establish that the act by its nature will probably and directly result in the application of physical force against another.” (*People v. Williams, supra*, at p. 790.)

The evidence showed Humphries used a knife to repeatedly stab and slice Alicia from her knees to her head. There was also evidence that, at least during a portion of this attack, Alicia was

holding R.H. in her arm. There is simply no question that a reasonable person would conclude that using a knife to repeatedly stab and slice a woman holding a baby would directly, naturally, and probably result in a battery to the baby. (See *People v. Tran* (1996) 47 Cal.App.4th 253, 262 [knife-wielding defendant who chased a father holding a baby committed an assault on the baby because “[s]urely a knife attack on the father could foreseeably have wounded the baby”].)

We reject Humphries’s assertion that a reasonable person would not have expected Alicia to turn her body in such a way as to expose R.H. to harm. According to Humphries, Alicia had been a loving and protective mother, and it was reasonable to expect she would shield R.H. from the knife. A reasonable person, however, would expect that someone being repeatedly stabbed and sliced with a knife would lack precise control over her movements. Thus, even if Alicia would be expected to try to shield R.H. from a knife attack, it would be unreasonable to expect that she would be successful in doing so.

II. The Court Did Not Err in Declining to Give an Imperfect Self-Defense Jury Instruction

Humphries asserts the court erred in denying his request that the jury be instructed on imperfect self-defense. We find no reversible error.

A. Applicable Legal Principles

Malice aforethought, which is a necessary element of murder (§ 187, subd. (a)), can be negated when the defendant kills in “the unreasonable but good faith belief in having to act in self-defense [citations].” (*People v. Barton* (1995) 12 Cal.4th 186, 199.) This is often referred to as “imperfect” or “unreasonable” self-defense. A defendant who kills without malice is guilty only

B. Discussion

Humphries requested that the trial court instruct the jury on imperfect self-defense. In support of his request, Humphries asserted that, given the “size difference between [Humphries and Alicia] and her actual ability to cause death,” the jury might find unreasonable his stated belief that his life was in danger when he acted in self-defense. The court denied the request as unsupported by the evidence, noting that if the jury believed Humphries’s testimony, it would find he acted in perfect, rather than imperfect, self-defense.

On appeal, Humphries briefly asserts it was error for the court to fail to consider evidence that he was physically bigger and stronger than Alicia. Humphries, however, fails to point us to any evidence in the record showing this discrepancy in size and strength. Nor does he point to any other evidence sufficient to warrant a finding that his belief in the need for self-defense was unreasonable. (See *People v. Mays* (2007) 148 Cal.App.4th 13, 34 [“[i]t is not sufficient to assert there was error; the appellant must support his claim by citations to the record”].)

Further, we reject Humphries’s assertion that the court was required to give an imperfect self-defense instruction solely because it gave a perfect self-defense instruction.⁴ According to Humphries, the fact the court gave an instruction on perfect self-defense establishes that there was sufficient evidence to warrant an imperfect self-defense instruction.

In support of this contention, Humphries cites *People v. Ceja* (1994) 26 Cal.App.4th 78, a case in which the court held it was reversible error for the trial court to refuse to instruct on

⁴ The court gave instructions on perfect self-defense, provocation, and heat of passion.

imperfect self-defense. (*Id.* at p. 86.) In a concurring opinion, Justice Johnson opined that an imperfect self-defense instruction should be given anytime there is sufficient evidence warranting a perfect self-defense instruction. (*Id.* at p. 90.) He reasoned as follows: “In one sense, imperfect self-defense is a ‘lesser included’ defense of perfect self-defense. They share common elements—the defendant killed because of an ‘actual’ belief he was in imminent danger of death or great bodily injury. Perfect self-defense, however, requires proof of an additional element—the defendant’s belief was reasonable. For this reason, one cannot establish the elements of perfect self-defense without proving imperfect self-defense. For this same reason, if there is sufficient evidence of all the elements required to justify a perfect self-defense instruction, by definition there is sufficient evidence supporting an instruction for the ‘lesser included’ defense of imperfect self-defense.” (*Ibid.*)

Although perhaps prudent practice, other courts, including this one, have rejected Justice Johnson’s bright-line rule. (See *People v. Rodriguez* (1997) 53 Cal.App.4th 1250 (*Rodriguez*); *People v. Valenzuela* (2011) 199 Cal.App.4th 1214; *Szadzewicz* (2008) 161 Cal.App.4th 823, 834.) In *Rodriguez, supra*, 53 Cal.App.4th 1250, for example, the court found no error where a trial court instructed the jury on perfect self-defense, yet failed to give an imperfect self-defense instruction. In *Rodriguez*, the defendant was convicted of murder after he stabbed a victim to death. In a statement to police, the defendant asserted the victim attacked him first, and the stabbing occurred during the ensuing struggle. (*Id.* at p. 1274.) In rejecting the defendant’s argument that the trial court was required to instruct on imperfect self-defense, the court reasoned that “[d]efendant’s

statements, if believed by the jury, could only lead to an acquittal based on justifiable homicide. It is inconceivable a jury could find defendant (who had earlier been attacked by [the victim] with a knife, and whose life was spared only because others intervened) acted unreasonably in killing [the victim] after [the victim] once again attacked him with a knife. [¶] Similarly, if the jury believed the prosecution's theory (that defendant threatened to kill [the victim], obtained a knife and the assistance of a friend, and went to [the victim's] room to carry out his stated intentions), it is inconceivable they could find defendant had an actual belief in the need for self-defense." (*Id.* at p. 1275.) The court explicitly rejected *Ceja* to the extent it suggests "that imperfect self-defense instructions must be given whenever perfect self-defense instructions are warranted by the evidence" (*Id.* at p. 1273.)

We reached the same conclusion in *People v. Szadziejewicz*, *supra*, 161 Cal.App.4th 823. In *Szadziejewicz*, the defendant was convicted of attempted murder for repeatedly slicing a victim's face with a knife. (*Id.* at p. 829.) According to the defendant, he was attempting to steal drugs from the victim's room when the victim attacked him. (*Id.* at p. 833.) The court instructed the jury on perfect, but not imperfect, self-defense. In finding the trial court did not err, we stated that "an imperfect self-defense instruction is not required just because the court is instructing on actual self-defense. Where . . . the defendant's version of events, if believed, establish actual self-defense, while the prosecution's version, if believed, negates both actual and imperfect self-defense, the court is not required to give the instruction." (*Id.* at p. 834.)

Here, Humphries testified that he was genuinely afraid for his life as Alicia repeatedly attacked him with a knife, causing numerous wounds to his forearm and hand. Even when Humphries gained control of the knife, Alicia continued to attack by punching and kicking him. Regardless of their respective sizes and strengths, there is no question that Humphries's fear of imminent danger to life or great bodily injury would have been reasonable in the wake of such an attack. In contrast, according to the prosecutor, Humphries was the aggressor and repeatedly stabbed and sliced Alicia, primarily while she was in the bathtub. If the jury believed this theory, "it is inconceivable they could find defendant had an actual belief in the need for self-defense." (*People v. Rodriguez, supra*, 53 Cal.App.4th at p. 1275.)

Because Humphries's version of events, if believed, established perfect self-defense, while the prosecution's version, if believed, negates both perfect and imperfect self-defense, we conclude the court was not required to give an imperfect self-defense instruction.

C. Harmless Error

Even if the trial court erred in denying Humphries's request for an imperfect self-defense instruction, we would find the error harmless. An error in failing to instruct on a lesser included offense does not warrant reversal unless a defendant establishes, based on an examination of the entire case, including the evidence, that "it appears 'reasonably probable' the defendant would have obtained a more favorable outcome had the error not occurred." (*People v. Breverman, supra*, 19 Cal.4th at p. 178, citing Cal. Const., art. VI, § 13 and *People v. Watson* (1956) 46 Cal.2d 818, 836.)

Humphries failed to point to any evidence in the record to show it was reasonably probable he would have obtained a more favorable outcome had the court instructed the jury on imperfect self-defense. Given the numerous and substantial inconsistencies and implausibilities in his various accounts of the incident, as well as the significant evidence that Humphries was the aggressor, no reasonable jury would have found that Humphries killed Alicia in an act of imperfect self-defense.

Humphries's testimony recounting the incident was remarkably different from his statements to detectives. At trial, Humphries testified he was genuinely afraid when Alicia repeatedly swung at him with a knife and attempted to kick and punch him. He further testified that, once he gained control of the knife, he swung it to protect himself from Alicia's continued attack. However, at no point in his interviews with detectives did Humphries mention that he was afraid of Alicia. Although he stated that Alicia came at him with the knife, he was explicit that she was not trying to stab, thrust, or swing the knife at him. He also failed to report swinging the knife to protect himself from Alicia's attacks.

Humphries also gave inconsistent explanations for his injuries. At trial, Humphries testified that Alicia caused him to suffer numerous knife wounds to his hand and arm. However, in interviews with detectives, at no point did he mention that Alicia was responsible for his wounds. Rather, he stated he suffered the wounds from the police dog, while tussling over the knife, and from unknown causes.

Even if the jury were to overlook these numerous inconsistencies and consider only those statements that support a self-defense theory, Humphries nonetheless failed to provide a

plausible explanation, either to the detectives or at trial, for how Alicia sustained 11 of the 12 stab wounds. In his interviews with detectives, Humphries reported that Alicia was stabbed once in the thigh, which she suffered accidentally. He speculated that she may have suffered other injuries while they tussled over the knife, but specifically denied grabbing the knife and stabbing her. At trial, Humphries changed his story somewhat, and testified that he gained sole control over the knife and swung it to protect himself while Alicia was coming at him. While this might explain the incision wounds, it does not explain how Alicia suffered additional stab wounds measuring several inches in depth.

In addition to the 11 unexplained stab wounds, the prosecutor introduced significant evidence showing Humphries was the aggressor. Over the course of the attack, Alicia sent multiple S.O.S. messages and audio recordings in which she was pleading with Humphries. She also sent a blurry photo of Humphries in which he was standing over her. The fact that the photo was blurry indicated it was rushed, which would be consistent with it being taken in the midst of the attack. Although Humphries testified that he was responsible for taking and sending the photo, he did not explain why he would send it to Alicia's brother, a man of whom he was so terrified that he jumped out a window to avoid.

The prosecutor also introduced evidence of Humphries's history of aggressively responding to verbal arguments with his wives and girlfriend using violence and threats of violence, which showed his propensity to commit such acts. (See Evid. Code, § 1109; *People v. Hoover* (2000) 77 Cal.App.4th 1020, 1024 [Evidence Code section 1109 "permits the admission of defendant's other acts of domestic violence for the purpose of

showing a propensity to commit such crimes”].) On three prior occasions, Humphries threatened his wives and girlfriend with a kitchen knife. In fact, two months prior to the incident, he held a knife to Alicia’s throat for a half hour, and threatened to kill her family.

Further, the extent and nature of Humphries’s and Alicia’s wounds strongly indicate he was the aggressor. Alicia suffered 23 knife wounds, ranging from her knees to her head. Of those, 12 were stab wounds of significant depth. In contrast, Humphries suffered some relatively minor cuts to his hand, which were easily explained by slippage of the knife as he attacked Alicia. Indeed, Humphries previously suffered a wound to his hand while threatening an ex-wife with a knife. Humphries also suffered some sort of wound to his arm, but its severity is not clear from the record and it could have been caused by the police dog.

Given the numerous inconsistencies and implausibilities in Humphries’s various versions of the incident, as well as the overwhelming evidence refuting that he was acting in self-defense, we perceive no reasonable probability that the results of this case would be different had the court instructed the jury on imperfect self-defense. As such, any error in failing to do so was harmless.

III. The Court Did Not Abuse its Discretion in Denying Humphries’s Motion to Continue the Sentencing Hearing

Humphries contends he was denied his constitutional right to counsel of choice when the trial court refused to grant a continuance of the sentencing hearing so that he could pursue the retention of private counsel. We disagree.

Humphries's original sentencing hearing was scheduled for December 7, 2016, but he refused to appear. The day before, Humphries filed a motion to continue on the basis that he was attempting to retain new counsel. The court continued the hearing to December 9, 2016, and ordered that Humphries be extracted from jail.

At the December 9, 2016 sentencing hearing, counsel stated Humphries sought a continuance so he could consider whether to retain private counsel. Private counsel was present and spoke at the hearing. He stated that Humphries made the decision to retain him, but it had not been finalized because Humphries was waiting to obtain the necessary funds from his family. Private counsel stated he was investigating a new defense premised on his belief that Humphries might suffer from chronic traumatic encephalopathy (CTE). This belief was based on conversations with Humphries and his family, the fact that Humphries reported suffering numerous concussions while playing football, and the fact that Humphries's recollection of the relevant events changed remarkably over time. Private counsel wanted to investigate the issue prior to judgment because the leading medical research on CTE was being conducted at UCLA, which is relatively close to Los Angeles County Jail. Private counsel had not yet had a discussion with Humphries or his family about funding the investigation, but was "certain that they'll be able to come up with that."

The court denied the motion to continue, finding the request was a delay tactic.⁵ The court stated there was no

⁵ The court noted there was no formal written request to substitute counsel, but to the extent prospective counsel had made an informal oral request, the request was denied.

indication that Humphries suffers from a mental illness such as CTE, noting that Humphries showed no signs of memory issues at trial, underwent mental health evaluations in connection with the case, and did not testify to having suffered any concussions from football.⁶

The right to the effective assistance of counsel “encompasses the right to retain counsel of one’s own choosing. [Citations.]” (*People v. Holland* (1978) 23 Cal.3d 77, 86, overruled on other grounds by *People v. Mendez* (1999) 19 Cal.4th 1084, 1097–1098.) “Underlying this right is the premise that ‘chosen representation is the preferred representation. Defendant’s confidence in his lawyer is vital to his defense. His right to decide for himself who best can conduct the case must be respected wherever feasible.’ [Citation.]” (*People v. Courts* (1985) 37 Cal.3d 784, 789 (*Courts*)). However, “the right of a defendant to appear and defend with retained counsel of his own choice is not absolute.” (*People v. Blake* (1980) 105 Cal.App.3d 619, 624 (*Blake*)). “The right to such counsel ‘must be carefully weighed against other values of substantial importance, such as that seeking to ensure orderly and expeditious judicial administration, with a view toward an accommodation reasonable under the facts of the particular case.’ [Citation.]” (*Courts, supra*, 37 Cal.3d at p. 790.)

Further, “a defendant who desires to retain his own counsel is required to act with diligence and may not demand a continuance if he is unjustifiably dilatory” (*Blake, supra*, 105 Cal.App.3d at pp. 623–624.) “It is likewise settled that it is

⁶ Humphries testified that he suffered ankle injuries while playing football in high school.

within the sound discretion of the trial court to determine whether a defendant shall be granted a continuance to obtain a private counsel [citation]; that there is no mechanical test for deciding whether a denial of a continuance is so arbitrary as to violate due process but rather each case must be decided on its own facts [citations]; that the burden is on the defendant to establish an abuse of discretion; and that in the absence of showing an abuse, the reviewing court will not disturb the ruling of the trial court. [Citation.]” (*Id.* at p. 624; see § 1050, subd. (e) [a court shall grant a continuance in a criminal case “only upon a showing of good cause”].)

We review the denial of a motion to continue for abuse of discretion, and reverse only if the trial court’s decision was so arbitrary as to deny due process. (See *People v. Doolin* (2009) 45 Cal.4th 390, 450.)

In light of the foregoing principles, we conclude the trial court did not abuse its discretion by denying Humphries’s request for a continuance. Humphries did not express any dissatisfaction with his counsel’s prior representation. Nor did he express concerns about counsel’s ability to represent him at the sentencing hearing. Instead, the purpose of retaining private counsel was simply to investigate a potential new defense related to CTE. Such an investigation could have been performed at any time prior to trial and sentencing, and Humphries failed to explain why he waited until shortly before sentencing to pursue it.⁷

⁷ To the extent Humphries believes counsel was ineffective in that regard, he may file a petition for writ of habeas corpus after judgment asserting ineffective assistance of counsel.

In any event, based on private counsel's representations at the hearing, the CTE defense was entirely speculative. The only evidence proffered that Humphries may suffer from CTE was the opinion of private counsel, who appears to have no expertise on the subject, and Humphries's representation that he suffered numerous concussions. Despite the fact that Humphries underwent mental examinations prior to trial, there was no indication that a medical professional had diagnosed Humphries with CTE or observed that he exhibited symptoms consistent with the disease. Private counsel also gave no indication that he had attempted to contact UCLA researchers regarding Humphries's case. Moreover, even if private counsel could obtain evidence that Humphries suffers from CTE, he failed to explain how he intended to use such evidence. For example, he did not indicate whether the evidence would be used as the basis for a motion for a new trial, in support of a petition for writ of habeas corpus, or as a mitigating factor at sentencing.

Given Humphries's prior delay tactic, the fact that Humphries had yet to retain private counsel, and the speculative nature of the basis for retaining new counsel, we do not believe the trial court acted so arbitrarily as to violate Humphries's constitutional rights in denying his request for a continuance. Humphries's request was "unjustifiably dilatory" (*Blake, supra*, 105 Cal.App.3d at pp. 623–624), and the trial court properly weighed his right to counsel of his choice "against other values of substantial importance, such as that seeking to ensure orderly and expeditious judicial administration," (*Courts, supra*, 37 Cal.3d at p. 790).

DISPOSITION

The judgment is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.