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California Court of Appeals
Jun 27, 2011

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THE PEOPLE, PLAINTIFF AND RESPONDENT, V. VICTOR MANUEL GARCIA, DEFENDANT AND APPELLANT.**OPINION**

MOORE, J.

The evidence is insufficient to support a conviction of first degree murder, but sufficient for a finding of implied malice for a conviction of second degree murder. We affirm in part and reverse in part.

I

FACTS

The Park

Evan Christiansen was a friend of Godsoe. On September 20, 2001, Christiansen, Godsoe and some friends went to Fairview Park. It was dark. They saw three teenage males in the distance, and Godsoe got their attention. The three approached the other group, and names were exchanged. Christiansen said one introduced himself as Junior and another said his name was “Pumpkin or Pumpkinhead.”

The combined group was “hanging out, drinking, talking” when Christiansen noticed Godsoe walking off with the one who introduced himself as Pumpkin or Pumpkinhead. Christiansen became increasingly worried because Godsoe did not return. He walked toward the street whistling and looking around for Godsoe. He headed toward her house, about a block and a half from the park, and saw that her bedroom light was off. When he found no one there, he walked back using the same path and saw nothing. Then he got to the end of a trail by the edge of a cliff and saw a body. It was Godsoe; Christiansen detected no breath or pulse. He saw blood on his hands.

Godsoe’s father testified she left the house around 6:30 or 7:00 that evening to go for a walk with Christiansen. He said: “She came back to the house at about 9:30 and said ‘It’s getting a little chilly, Dad. I just want to get, you know, a shirt on or something.’”

Albert Landeros, defendant’s cousin, and Gustavo Gonzalez went to the park to drink some beer that evening. They were sitting “over by the cliffs” when “the girl and the guy, they showed up.” Landeros introduced himself as Gonzo and defendant said he was called Pumpkinhead. Landeros testified he remembered defendant and Godsoe “talking a little bit amongst themselves, but” did not remember what they said. At some point, defendant left the group and Godsoe followed him. Neither returned. After a while, “maybe about half hour, 45 min-

Godsoe's had been dragged 25 or 26 feet. Her body was found at the far end of a trail.

Police Interviews

Landeros told the police defendant wore work boots on September 20. Landeros said defendant and Godsoe left the group together.

Defendant told the police "he had gone with his cousin and some friends to the park after the birth of his baby, which was earlier that day, actually on the 20th. It was Thursday. They purchased some beer, and they decided to celebrate the birth of his child, baby girl." Defendant said he did not have a nickname. He said after a while, Gonzalez got into an argument and they broke up the celebration and went home. According to the lead detective, when he showed defendant a photograph of Godsoe, "he said he — he did not meet her, did not know her. Upon confirming, he reiterated he was positive he had never met her, seen her, did not encounter her that night."

After his police interview, defendant went to Mexico. He remained there for years until he was extradited to the United States.

The Autopsy

A pathologist described what was found during Godsoe's autopsy: "Externally there were multiple injuries to the body, primarily centered to in the area of the face, neck and upper torso. Those consisted of abrasions, contusions, lacerations, not only externally, but also during the internal examination particularly in the facial area. There was, in addition to the bruises and bleeding, there was extensive laceration noted in the area of the mouth. There

lying gums and loosening of the teeth. There was also laceration, of course, of the buccal or oral mucosa, the lining of the inside of the mouth.” He also found contusions on the wrists, elbow, foot and legs. One of the injuries was consistent with a bite mark.

Injuries to her face could have been “caused by a punch or possibly even a foot.” The doctor stated: “A single stomping type of blow could conceivably cause all those injuries.” Regarding the injury to the bridge of her nose, the pathologist testified: “In my opinion, these were probably caused by separate blows. In other words, conceivably, if this was caused by a fist, that something may have been in that hand, possibly a ring.”

Godsoe “died as a result of asphyxiation.” It was not a manual strangulation. The pathologist stated: “[S]he asphyxiated due to the fact that she had injury to the laryngeal area, the neck area, with disruption of the structures, including the fractured jaw. So that interferes with her swallowing and breathing mechanism. And on top of that, there is blood as a result of the injury to the buccal mucosal surface, laceration of the oral mucous membrane in the underlying tissues as well as injury to the gums, and then on top of that the formation of secretions. So the combination of the blood and its secretions and the interference with proper swallowing I think is enough to cause an obstruction of her larynx, so, instead of actually swallowing all of that, she’s actually breathing some of that into her tracheabronchial tree, and, as a result, she asphyxiated.”

Because there was blood in her lungs, it is known she did not die right away. He explained that “the brain is still functioning, and it can function anywhere from five to seven minutes after you become unconscious.”

DNA Analysis

The director of the DNA laboratory at the Orange County Sheriff's crime laboratory performed a genetic analysis of material involved in Godsoe's murder. One of the articles she tested was the arm of Godsoe's sweatshirt where her autopsy revealed a bite mark on her arm. She found defendant's "DNA type in some of the stains as a sole source, and [she] also found his type in some of the stains in combination with the victim." Although she thought the world's population is approximately six billion people, she testified this DNA type would be found once in a trillion in the population on the planet.

Prosecutor's Argument

During his argument, the prosecutor stated: "What gets us a first here is that that was a severely injured, 16-year-old girl in obvious medical distress. And he made a decision, and the decision was to drag her off the path down the trail so that nobody would find her. That's what makes this a first. And Mr. Davis has all but conceded the kicking in the head, the kicking in the throat. That's inherently dangerous to human life. That type of beating is a second-degree murder if somebody dies, and Mr. Davis knows that. [¶] What gets this case to a first and what makes this case so bad is that after that beating she could still be saved. And he made a coldblooded decision to drag her down the trail. That's what makes it a first. It's the decision."

II

DISCUSSION

Defendant contends there is insufficient evidence of premeditation and deliberation supporting his first degree

beating itself that made this murder first degree. Instead, he argued it was [defendant]’s decision to drag Godsoe’s unconscious body to an isolated area of the park, after having forcefully punched and kicked her about the head and neck area resulting in serious bodily injury, that demonstrates this was a premeditated and deliberate killing.”

Murder is the unlawful killing of a human being with malice aforethought. (**Pen. Code § 187, subd. (a).**) “Our task in deciding a challenge to the sufficiency of the evidence is a well-established one. ‘[W]e review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] In cases in which the People rely primarily on circumstantial evidence, the standard of review is the same. [Citations.]’ [Citation.] “‘An appellate court must accept logical inferences that the jury might have drawn from the evidence even if the court would have concluded otherwise. [Citation.]’” [Citation.]” (*People v. Solomon*) (2010) [49 Cal.4th 792, 811-812.](#)) “‘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.]’ [Citation.] “‘Premeditation and deliberation can occur in a brief interval. ‘The test is not time, but reflection. “Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly.”’” [Citation.]’ [Citations.]” (*Id.* at p. 812.)

“The type of evidence which this court has found sufficient to sustain a finding of premeditation and deliberation falls into three basic categories: (1) facts about how and what defendant did *prior* to the actual killing which

duct with the victim from which the jury could reasonably infer a ‘motive’ to kill the victim, which inference of motive, together with facts of type (1) or (3), would in turn support an inference that the killing was the result of ‘a pre-existing reflection’ and ‘careful thought and weighing of considerations’ rather than ‘mere unconsidered or rash impulse hastily executed’ [citation]; (3) facts about the nature of the killing from which the jury could infer that the *manner* of killing was so particular and exacting that the defendant must have intentionally killed according to a ‘preconceived design’ to take his victim’s life in a particular way for a ‘reason’ which the jury can reasonably infer from facts of type (1) or (2).” (*People v. Anderson* (1968) [70 Cal.2d 15, 26-27.](#))

Defendant argues this situation lacks all of the *Anderson* factors. But the Supreme Court, itself, has clearly stated they are not all necessary in each situation: “[A]s we have often observed, ‘*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.]” (*People v. Solomon, supra*, [49 Cal.4th 792, 812.](#))

Regardless of defendant’s argument that all of the *Anderson* factors are not present in the instant crime, there was no evidence defendant ever tried to get help for Godsoe after he severely injured her. Instead there is circumstantial evidence he dragged her to the end of a trail, making it difficult for anyone to find her and render aid.

Nonetheless, even assuming defendant struck and kicked the victim many times, there is no evidence how long the beating lasted. We don’t know when Godsoe lapsed into unconsciousness. If defendant continued beating her after she became unconscious, she could have died five to seven minutes later while she was still being beaten. Nor is there evidence she was still alive when defendant dragged her body to the end of the trail.

There is sparse evidence regarding whether or not Godsoe would have survived even had she been discovered. During the questioning of the pathologist, the prosecutor and the doctor stated:

“Q: When somebody has a broken jaw, is that an automatically fatal injury?

“A: No.

“Q: Okay. And, in fact, doctor, medical intervention — if somebody were to call 911, that person could, 99 times out of a hundred, probably easily be saved, would you agree with me?

“A: I would say yes.”

The evidence is insufficient to demonstrate defendant reflected, carefully weighed the considerations and planned to hide her and let her die without aid. While that very well might be what happened, a rational jury could not reasonably draw that conclusion without speculating. Under the circumstances in this record, we find there is insufficient evidence to support a conviction for first degree murder.

We reject defendant’s claim he cannot be convicted of second degree murder because there is insufficient evidence to support a finding of implied malice. “Second degree murder is the unlawful killing of a human being with malice aforethought but without the additional elements, such as willfulness, premeditation, and deliberation, that would support a conviction of first degree murder. [Citations.]... “[M]alice may be either express or implied. It is express when there is manifested a deliberate intention to take away the life of a fellow creature. It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and ma-

sequences of which are dangerous to life, which act was deliberately performed by a person who knows that his conduct endangers the life of another and who acts with conscious disregard for life.”” [Citations.] Knowledge of the risk of serious bodily injury is not enough; knowledge of a high probability of death is too much. ‘In short, implied malice requires a defendant’s awareness of engaging in conduct that endangers the life of another—no more, and no less.’ [Citation.]” (*People v. Vance* (2010) [188 Cal.App.4th 1182, 1203.](#)) Here there is no evidence of provocation and substantial evidence the natural and probable consequences of defendant’s actions were a danger to Godsoe’s life and defendant acted with conscious disregard of her life.

III

DISPOSITION

Defendant’s conviction of first degree murder is reduced to second degree murder. In all other respects, the judgment is affirmed.

WE CONCUR: RYLAARSDAM, ACTING P. J., O’LEARY, J.

Comments

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