

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ARMANDO LOPEZ,
Appellant.

No. 2 CA-CR 2013-0365
Filed July 30, 2014

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20120450001
The Honorable Richard D. Nichols, Judge

AFFIRMED

COUNSEL

Thomas C. Horne, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Diane Leigh Hunt, Assistant Attorney General, Tucson
Counsel for Appellee

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Lori J. Lefferts, Pima County Public Defender
By David J. Euchner, Assistant Public Defender, and
R. Alex Coomer, a student certified pursuant to
Rule 38(d), Ariz. R. Sup. Ct., Tucson
Counsel for Appellant

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Miller and Judge Espinosa concurred.

ECKERSTROM, Chief Judge:

¶1 Following a jury trial, appellant Armando Lopez was convicted of first-degree murder and sentenced to a natural-life term of imprisonment. On appeal, he challenges the sufficiency of the evidence concerning premeditation, the denial of a requested jury instruction, and the preclusion of certain evidence. We have jurisdiction pursuant to A.R.S. § 12-120.21(A)(1) and affirm for the reasons that follow.

Factual and Procedural Background

¶2 The evidence, viewed in the light most favorable to sustaining the verdict, establishes the following facts. *See State v. Sprang*, 227 Ariz. 10, ¶ 2, 251 P.3d 389, 390 (App. 2011). The victim and Lopez were in a romantic relationship and lived together in the same house. On January 28, 2012, the two began arguing in their bedroom after Lopez discovered a letter the victim had written to her former boyfriend. The victim's sixteen-year-old daughter awoke to the sound of her mother yelling for help. When the daughter looked into the bedroom, she saw Lopez standing over her mother, hitting her. The daughter pushed Lopez off the victim, who told her to call the police. As the daughter ran out of the bedroom, Lopez resumed attacking the victim.

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¶3 The daughter went outside and spoke to a 9-1-1 operator for about five minutes as she waited for law enforcement officers to arrive. During that time, she reported that her mother was screaming inside. She also saw Lopez “poke his head out” the front door to look around before closing it and disappearing back into the house. He then exited the front of the house, covered in blood, and sat in a chair. He told the first law enforcement officer who responded to the scene, “I’m here. I did it.” When another officer asked if Lopez was hurt, he responded, “No, she was cheating on me.”

¶4 The victim died from multiple stab wounds inflicted by a steak knife that had been kept in the kitchen. The physical evidence also indicated the victim had been choked in various ways, with asphyxiation being a contributing factor to her death. She sustained a total of fifteen stab wounds on various parts of her body, including her chest, arm, lower abdomen, leg, and back. She also suffered significant slicing or “incised” wounds on such places as her forehead and the backs of her legs, as well as numerous other cuts, abrasions, and bruises.

Sufficiency of the Evidence

¶5 Lopez contends his first-degree murder conviction must be reduced to a lesser charge due to a lack of evidence showing the killing was premeditated. “A person commits first degree premeditated murder if, ‘[i]ntending or knowing that the person’s conduct will cause death, the person causes the death of another person . . . with premeditation.’” *State v. Payne*, 233 Ariz. 484, ¶ 94, 314 P.3d 1239, 1264 (2013), quoting A.R.S. § 13-1105(A)(1). “Premeditation means that the defendant acts with either the intention or knowledge that he will kill another human being, when such intention or knowledge precedes the killing by any length of time to permit reflection.” *Id.*, quoting *State v. Thompson*, 204 Ariz. 471, ¶ 12, 65 P.3d 420, 424 (2003). Premeditation requires “actual reflection and more than mere passage of time.” *State v. Boyston*, 231 Ariz. 539, ¶ 60, 298 P.3d 887, 899 (2013).

¶6 “A conviction for premeditated first degree murder must be supported by substantial evidence of premeditation,” which

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may be either direct or circumstantial. *Id.*; see *State v. Spencer*, 176 Ariz. 36, 41, 859 P.2d 146, 151 (1993). If reasonable minds may differ on the conclusion to be drawn from the evidence, then the evidence is substantial, and the conviction must be upheld. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). In other words, we will not disturb a finding of premeditation “[u]nless there is a complete absence of probative evidence to support” it. *State v. Lopez*, 158 Ariz. 258, 262, 762 P.2d 545, 549 (1988). The sufficiency of evidence is a question of law we review de novo. *State v. West*, 226 Ariz. 559, ¶ 15, 250 P.3d 1188, 1191 (2011). And because we view the evidence in the light most favorable to upholding the verdict, see *State v. Hernandez*, 232 Ariz. 313, ¶ 50, 305 P.3d 378, 389 (2013), a defendant’s own account of a killing may be disregarded when determining whether there is sufficient evidence of premeditation. See *State v. Izzo*, 94 Ariz. 226, 230, 383 P.2d 116, 118 (1963).

¶7 By these standards, the record contains ample evidence to support the verdict of guilt. The jury reasonably could have found premeditation based on (1) the romantic quarrel preceding the killing and Lopez’s comments after it, which suggested his jealousy had motivated him to acquire a knife and commit the crime, see *State v. Neal*, 143 Ariz. 93, 98, 692 P.2d 272, 277 (1984); (2) “[t]he nature, severity and placement of the injuries to the victim,” *Lopez*, 158 Ariz. at 263, 762 P.2d at 550, which confirmed that Lopez had engaged in a “brutal . . . and . . . sustained attack,” *State v. Gulbrandson*, 184 Ariz. 46, 65, 906 P.2d 579, 598 (1995); and (3) the interruption of the assault by the victim’s daughter, followed by the resumption of the attack by alternate means—hitting, choking, and stabbing. See *State v. VanWinkle*, 230 Ariz. 387, ¶ 16, 285 P.3d 308, 313 (2012).

¶8 Considering all the evidence, a rational jury could find that Lopez intended to kill the victim and, “after forming that intent . . . reflected on the decision before killing.” *Id.* ¶ 15, quoting *Thompson*, 204 Ariz. 471, ¶ 32, 65 P.3d at 428. As Lopez maintains, many of the above facts might also support a conclusion that he was motivated by strong emotions, suggesting he killed the victim in the “heat of passion.” A.R.S. § 13-1101(1). But, the persistence of the assault, notwithstanding the daughter’s intervention, the

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deliberation necessary to secure a knife from the kitchen, the multiplicity of blows and modes of assaulting the victim, and Lopez's apparently calm explanation for why he committed the assault in the minutes thereafter, together constitute substantial evidence from which the jury could reasonably conclude that Lopez intended to kill the victim and reflected on his actions as he was doing so. *See Guerra*, 161 Ariz. at 293, 778 P.2d at 1189.

Jury Instruction

¶9 Lopez next argues the trial court erred by refusing his requested instruction defining "reflection." The proposed instruction provided as follows:

Reflection is defined as a fixing of the thoughts on something, or a careful consideration. In other words, it includes such things as meditation, rumination, deliberation, cogitation, study, and thinking. It is a time period of some substance. It must be a time period sufficient to encompass a complex thought process, the kind of process involved, for example, in careful consideration.

"We evaluate the trial court's denial of a proposed jury instruction for abuse of discretion, but review de novo whether a jury instruction correctly states the law." *State v. Cox*, 217 Ariz. 353, ¶ 15, 174 P.3d 265, 268 (2007).

¶10 As the state correctly observes, the trial court could have rejected the proposed instruction on at least two grounds. First, the term "reflection" is commonly understood and does not require elaboration. *See State v. Valles*, 162 Ariz. 1, 6, 780 P.2d 1049, 1054 (1989); *see also Thompson*, 204 Ariz. 471, ¶ 32, 65 P.3d at 428-29 (omitting more specific definition of "reflection" from prescribed instruction for "premeditation"); *cf. State v. Hausner*, 230 Ariz. 60, ¶¶ 104-05, 280 P.3d 604, 627 (2012) (finding instruction that sentencing aggravator involved "'calm and cool reflection'" provided clear, detailed guidance to jury).

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¶11 Second, the proffered instruction misstated the law and could have misled the jury. While Lopez’s instruction stated that reflection “is a time period of some substance,” the mere passage of time does not establish reflection or premeditation, as the instruction suggests. *Boyston*, 231 Ariz. 539, ¶ 60, 298 P.3d at 899. The critical determination is whether “the defendant actually reflected.” *Thompson*, 204 Ariz. 471, ¶ 31, 65 P.3d at 428. A trial court may refuse to give an instruction that contains an incorrect statement of law. *State v. Paxton*, 186 Ariz. 580, 589, 925 P.2d 721, 730 (App. 1996); accord *Pub. Serv. Co. of Okla. v. Bleak*, 134 Ariz. 311, 319, 656 P.2d 600, 608 (1982). Thus, the court did not abuse its discretion by refusing the proposed instruction here.

¶12 Although Lopez acknowledges that the trial court gave a premeditation instruction nearly identical to the one approved in *Thompson*, 204 Ariz. 471, ¶ 32, 65 P.3d at 428-29, he nonetheless suggests an “extension” of that instruction is required to avoid “unconstitutional[] vague[ness].” To the extent the trial court gave an instruction mandated by our supreme court, it adequately instructed the jury on the issue, *State v. Cheramie*, 217 Ariz. 212, ¶ 22, 171 P.3d 1253, 1260 (App. 2007), *vacated in part on other grounds*, 218 Ariz. 447, ¶ 23, 189 P.3d 374, 378 (2008), and we are not at liberty to overrule, modify, or disregard our high court’s decision. See *State v. Foster*, 199 Ariz. 39, n.1, 13 P.3d 781, 783 n.1 (App. 2000).

Evidentiary Ruling

¶13 Last, Lopez contends the trial court erred by precluding a toxicology report showing that the victim had cocaine in her body at the time of her death. He urges this evidence was relevant to show that the victim was “excitable,” that she had provoked him, and that their quarrel “ar[ose] suddenly” and “escalate[d] quickly . . . without any time for reflection or premeditation.” We review a court’s evidentiary rulings for an abuse of discretion, *State v. Smith*, 215 Ariz. 221, ¶ 48, 159 P.3d 531, 542 (2007), and find no abuse here.

¶14 As the state points out, the trial court admitted other evidence showing the victim had twice consumed cocaine on the night of the murder, which the state did not dispute. The additional medical evidence was thus appropriately precluded on the ground

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that any slight probative value was substantially outweighed by its potential to waste time, confuse the issues at trial, or cause unfair prejudice by risking a verdict on an improper emotional basis. *See* Ariz. R. Evid. 403; *State v. Dann*, 205 Ariz. 557, ¶ 39, 74 P.3d 231, 243 (2003); *Neal*, 143 Ariz. at 101, 692 P.2d at 280.

Disposition

¶15 Because we find no error, constitutional or otherwise, we affirm Lopez's conviction and sentence.