Filed 8/31/20 P. v. Bridget CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. ANTHONY EDWARD BRIDGET, Defendant and Appellant.	G056928 (Super. Ct. No. 13CF1025) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, John Conley, Judge. Affirmed in part, reversed in part. Remanded with directions.

Gordon S. Brownell, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Assistant Attorney General, Paul M. Roadarmel, Jr., and David A. Wildman, Deputy Attorneys General, for Plaintiff and Respondent.

Appendix A

In this murder-for-hire case, a jury convicted defendant Anthony Edward Bridget of conspiracy to commit murder (Pen. Code, §§ 182, subd. (a)(1), 187, subd. (a); undesignated statutory references are to the Penal Code), first degree murder (§ 187, subd. (a)), aggravated assault (§ 245, subd. (a)(1)), and false imprisonment by violence (§§ 236, 237, subd. (a)). As to the murder, the jury found two special-circumstance allegations true: murder for financial gain, and murder by means of lying in wait (§ 190.2, subd. (a)(1), (15)). The trial court found prior conviction enhancement allegations true for four prior strikes (§§ 667, subds. (d), (e), 1170.12, subds. (b),(c)), two serious felony convictions (§ 667, subd. (a)(1)), and two prior prison terms (§ 667.5, subd. (b)).

Defendant was sentenced to an indeterminate term of life without the possibility of parole for the special-circumstances murder, plus a ten-year enhancement for the two serious felony priors. A consecutive 25 years to life under the "Three Strikes" law was imposed for the aggravated assault charge, with an additional 10 years added for the two serious felony priors. Sentences on the conspiracy and false imprisonment charges were imposed and stayed under section 654, and the court struck the two prior prison term enhancements. The court summarized its sentence as "life without the possibility of parole, plus 25 to life, plus 20 years, determinate sentence."

Defendant raises four claims on appeal: (1) The trial court prejudicially erred in its response to the jury's note stating it was unable to reach a verdict. (2) There was insufficient evidence to support the lying-in-wait special- circumstance finding. (3) The aggravated assault and false imprisonment convictions must be reversed because the statute of limitations for those two crimes had expired before the prosecution was commenced. (4) The two five-year serious felony enhancements imposed on the aggravated assault charge were erroneous because that charge is not a qualifying serious felony.

We reject defendant's first two claims, and find the court's response to the jury was not error and that substantial evidence supports the jury's lying-in-wait finding. We agree the aggravated assault and false imprisonment convictions must be reversed because the statute of limitations for those charges expired long before the prosecution in this case was commenced. We need not decide whether the aggravated assault was a serious felony because, with that conviction set aside, the two five-year enhancements imposed on that charge must be vacated as a matter of law. The judgment is affirmed in part, and reversed in part.

FACTS

Because defendant raises a sufficiency of the evidence claim as to the jury's lying-in-wait special-circumstance finding, we lay out the underlying facts in some detail, doing so in the light most favorable to the jury's verdicts. (*People v. Abilez* (2007) 41 Cal.4th 472, 504.) Additional facts relevant to the specific issues defendant raises on appeal are found in the discussion section below.

In 2004, the Girgis family consisted of husband Magdi, wife Ariet, and their two sons: 22-year-old Richard and 17-year-old Ryan.[1] They all lived together in their Westminster home. Richard used a downstairs bedroom, while Ryan's bedroom was upstairs, as was his parents' master bedroom.

One February night, Magdi picked up Ryan after work. He had called his mother to pick him up, but she had said, "Your dad hit me." When Ryan got home, Ariet's eye was swollen and her nose appeared injured as well; she was crying. Later that night, Richard took Ariet to the hospital.

The next day, Ryan found out Magdi had been arrested and a restraining order had been issued. Magdi moved to an apartment complex he owned with his brother

---

[1] For clarity we refer to the family members by their first name; we mean no disrespect.

Adel in Long Beach. Ryan had "zero contact" with his father after he moved out, and he did not recall Magdi ever coming back to the house after that.

In the days following the incident, Ryan was "really confused" and "was worried about [his] safety, [and his] mom's safety." Since Magdi controlled the finances, Ryan was also worried about what would happen to Ariet with Magdi out of the house. Ariet too was scared. She wanted to leave, but was torn because it was Ryan's last year of high school.

Richard talked with Magdi after the domestic violence incident. Magdi was very upset about the whole situation and felt that he was being treated unfairly. He was worried the domestic violence case would cause him to lose his respiratory therapist license. Money was very important to Magdi and he was also concerned he would lose money to Ariet if they were to divorce. After the August 2004 preliminary hearing in the domestic violence case, at which Ariet testified, Magdi told Richard that he would be better off if he just killed Ariet.

Magdi's brother Adel said that when he and Magdi were living together in Long Beach, he became concerned for Ariet's safety because Magdi had "mentioned that he might think of getting rid of [Ariet] or killing her if she does something to hurt him." Adel sent two anonymous letters to the Westminster Police Department, stating his concern for Ariet and for the prosecutor in the domestic violence case because Magdi had also made statements threatening to kill the deputy district attorney prosecuting his case.[2]

On September 28, 2004, about two months after the preliminary hearing in the domestic violence case, Ariet came home from work at 5:00 or 6:00 p.m. Ryan thought she went to bed around 9:30 p.m. Richard was not at home that night and was in

---

[2] In February 2005, on the day set for trial, Magdi pleaded guilty to charges of felony domestic violence and attempting to prevent a witness from testifying while released on bail. Ariet was murdered five months before that plea was entered.

Long Beach visiting a girlfriend and a work friend. He was trying to stay up all night to prepare for his new nightshift job.

About 10:30 p.m., after Ariet was asleep, Ryan snuck out. Ryan's bedroom was about 20 feet down the hall from his mother's master bedroom. Ryan was not supposed to go out at night, so he left through a sliding back door. He was unable to lock that door from the outside and would leave it open for himself. However, the front door was always locked. There was also a spare key hidden in a small box on the side of the house by the garage. It fit the front door lock and a side garage door lock.

Ryan got home between 1:00 and 1:30 a.m. He sat outside in his friend's car and they talked for a while. Eventually, he went into the house through the sliding back door. The house was dark except for a light on the stove. Everything in the house and the neighborhood "looked normal." Ryan went upstairs to his bedroom, listened to some music, and thought he fell asleep about 1:30 a.m. His mother's bedroom door was closed when he got home. Except for light coming in from a streetlight through a small gap in the vertical blinds on his window, Ryan's room was dark.

At about 3:30 a.m., Ryan was awakened when he heard a door fling open and felt a gloved hand go over his mouth. It was still dark in the bedroom. Ryan, who had been sleeping on his stomach, could feel the intruder's body on top of him. In an attempt to get away, Ryan rolled over, hit the nightstand, and knocked over a lamp. He was able to get up and started swinging at the intruder. The two wrestled as Ryan was "screaming for Richard and my mom . . . just yelling and screaming for my life."

The man was wearing a beanie, which covered his whole head, and dark clothes which fully covered his body. The man "wrestled [Ryan] down," and then a second person, who appeared to be a very tall man wearing dark clothes, came into the room. Ryan, who was "really frantic at that moment," remembered this second man threatening his life. He did not remember exactly what words the man used, but he clearly implied that he would kill Ryan if he did not stop struggling.

Meanwhile, the first man used duct tape on Ryan's hands behind his back while Ryan was lying on the floor with his face in the carpet. Ryan's head was near the doorway, and he could see down the hallway. He then saw his mother come down the hall, "really, really frantic," telling the men "'take anything you want, take anything you want.'"

Ryan said the second man turned around and "then grab[bed] my mom in a bearhug, and then ma[de] their way towards the master bedroom." The first man ordered Ryan into the bedroom closet after Ryan had pleaded something to the effect of "please don't kill me." He replied, "I know your circumstances. I know what you're going through. I'm not going to kill you."

The man then "pretty much" lifted Ryan up and walked him into the closet, where Ryan fell backwards. Ryan was partly inside, lying on his back with his feet hanging out the half-closed closet door. The man then used duct tape on his ankles and his mouth. Because the closet door was not completely shut, he could see the man sitting on the edge of his bed, facing Ryan and the closet. The man took off his gloves for a moment and reached for a shoe. He took the shoestring out of the shoe, told Ryan to turn over, and then tied Ryan's wrists with it.

About that same time, Ryan heard his mother scream and heard something "like cuts of fabric," but he did not know where the sound was coming from. Ryan remembered then hearing the first man ask "'Where are you at Cool G' or 'Homey G.' or 'Yo G.'" The second man replied, "I'm downstairs."

Ryan estimated he was in his bedroom with the first man for "no more than 10 minutes." He did not see or hear the man leave the bedroom, but he "heard like a car with a muffler take off. So I associated the two with each other." Neither man ever asked Ryan about money, jewelry, or drugs.

Ryan removed the duct tape and shoelace and freed his legs. He grabbed his cell phone and fled to get help because he did not know who was still in the house.

He called 911 and reported what had happened. He told the dispatcher he saw the face of one of the men, who was wearing a black beanie and whom he described as "really, really dark skinned." He thought the second man's name was "something Gee," which is what the first man called him.[3]

After speaking with the 911 dispatcher, Ryan called Richard and then his father. Richard immediately drove to the house and, when he got there, he saw a lot of police officers. Ryan did not see his father. A few days later, Ryan went back to the house with police and did a walkthrough. Nothing was missing or stolen. The parties stipulated to the crime scene processing. Photographs showed the bed in Ariet's master bedroom. There was a cut in the middle of the sheets that went down into the mattress; there was blood on the bed and blood spatter on the wall. Ariet's body was lying on the floor next to the bed, covered in blood. Police found no signs of forcible entry into the house.

The forensic pathologist testified Ariet sustained "a series of multiple extensive slashing type sharp injuries on her head, face and neck." She was also stabbed on the left side of her abdomen and had three stab wounds on her left flank region towards the back. The neck injuries were "the most extensive," causing a "near complete . . . decapitation of the head." There was a complete severing of Ariet's jugular vein on the left side of her neck and the carotid artery on the right side of her neck. Both wounds would have led to "extensive and massive bleeding . . . [a]nd those injuries by

---

[3] Several years later, Ryan recognized defendant as the first intruder when he attended defendant's arraignment. Ryan said he knew "[r]ight away" that he was the first man. He said he felt anxiety, paranoia, flashbacks and "everything you could think of" when he saw defendant. Ryan also remembered hearing defendant's voice at the arraignment and "couldn't believe it." At trial, Ryan also positively identified defendant as the first man. Ryan acknowledged he had been told by several members of the prosecution team that defendant was the person who had tied him up in his room. But he said no one showed him any photograph of defendant or told him how to testify.

themselves would be enough to simply cause the death in a fairly rapid fashion." The immediate cause of death was exsanguination.

A forensic scientist testified about the procedures and protocols of collecting forensic evidence, including photographs, fingerprints, swabs of biological and DNA evidence, and the handling of that evidence. The morning after the murder, he went to the Westminster Police Department along with another forensic scientist and met with Ryan. They took photographs and collected swabs from Ryan's mouth, face, fingernails, and teeth. The duct tape from Ryan's wrist and neck was collected, as was Ryan's clothing and the shoelace. DNA swabs were taken from the shoelace.

In October 2012, a DNA profile taken from the shoelace registered a "hit" on a national DNA database; the person associated with it was the defendant. On January 29, 2013, a fresh swab was collected from the defendant. After the laboratory received that swab and tested it, it was determined that the major DNA profile on the shoelace sample was consistent with Ryan and the minor profile was consistent with the defendant. The prosecution's DNA expert testified that the frequency of choosing an individual at random who could not be excluded as the minor contributor of that shoelace sample was "estimated to be more rare than 1 in 1 trillion unrelated individuals."

On January 30, 2013, two undercover police officers met with Magdi at the house where Ariet was murdered. They told Magdi they knew he had paid a friend to kill his wife in the house, and they wanted $5,000 to keep their mouths shut. Magdi told the officers he did not know what they were talking about, but he took a piece of paper with the officer's telephone number on it when it was offered. When Magdi left, police followed him to Long Beach, where he went to a payphone and made two calls.

The following day Magdi called the undercover officer and said, "Are you the guy?" The officer answered, "Yes." Magdi asked, "What's the problem my friend?" The officer responded, "The problem is that my friend took care of a little business, and we're just trying to get paid to keep it hush." Magdi replied, "I thought you got paid

everything." The officer said, "[W]e got paid everything, but the police are sniffing around." Magdi attempted to negotiate the price down from $5,000. He asked, "Well, how am I going to trust you?" and the officer replied, "Because I have the information." Magdi eventually agreed to pay $1,500 and to meet the undercover officers the next day in Long Beach.

The next day, the officers met with Magdi. Magdi handed over an envelope containing $1,500, and said, "All right, my friend." The officer replied, "Is everything good?" Magdi said, "Yeah." As they were "parting ways," the officer asked Magdi, "What the fuck did your wife do so mother fucking bad to you to make you want to kill her ass? Jesus." Magdi responded, "See you, my friend, [it's] at peace." Magdi was then arrested. Charges were filed against defendant on April 2, 2013.[4]

DISCUSSION

1. The Trial Court's Response to the Jury's Note Was Not Error

A. Background

After less than a day of deliberations, which included two intervals of testimony being read back, the jury sent the trial court a message stating, "Unable to come to a decision. We are tied 6/6."

The court's proposed response to the jury was: "The jury has sent out a message, 'Unable to come to a decision. We are tied 6/6.['] [¶] Including jury selection this trial took about 7 days. The jury has deliberated for only about 5½ hours at this point, less than a day. Some of that time was in hearing testimony re-read. This is a relatively short period of deliberation, in the court's view. [¶] If a jury becomes

[4] Before the trial in this case, Magdi was separately prosecuted and convicted of conspiracy to commit murder and first degree murder with special-circumstance allegations of murder for financial gain and to prevent testimony. His conviction was affirmed in 2017. (*People v. Girgis* (Apr. 27, 2017, D070461) [nonpub. opn.].)

hopelessly deadlocked, the court would have to declare a mistrial. [¶] The court is asking the jury to continue its deliberations."

Defense counsel asked the court to consider adding additional language similar to that found in an unspecified CALJIC instruction to tell the "jurors not to change their vote for the sake of a verdict." The court declined, stating, "I think you're just adding a little argumentative twist to the instruction." The court sent its proposed response to the jury unchanged, and the jury returned its verdicts the following day.

B. The Court Did Not Err by Refusing to Add Language to Its Response

Defendant contends the trial court erred by declining defense counsel's request to add additional language to the jury response to remind "jurors not to change their vote for the sake of a verdict." We find no error.

Defense counsel did not submit or request a particular jury instruction, whether CALJIC, CALCRIM, or a pinpoint instruction of her own design.[5] Instead, she merely requested "language" be added to the court's response to the jury's note. The court observed, "Initially, both sides agreed" to the court's response to the jury, but then defense counsel "wanted to add something to it." The court rejected her suggestion, finding it was "just adding a little argumentative twist" to the proposed response.

As a result, defendant slightly mischaracterizes the trial court's ruling as a refusal "for a correct instruction." The court merely responded to a jury question; it did not "instruct" the jurors to do anything other than to continue their deliberations. Moreover, defendant cannot reasonably assign error by simply referring to an unspecified jury instruction that *could* have been given, but was never requested. Thus, defendant's assertion that CALCRIM No. 3551 "would have been an excellent instruction to give in response to the jury's note," and that CALJIC 17.40 "correctly states the law," is misplaced. Defendant did not request either instruction be given, and the court had no

[5] It is only on appeal that defendant points to the jury instructions his trial counsel was presumably referring to. (See CALCRIM No. 3551 & CALJIC 17.40.)

sua sponte duty to give them. (See CALCRIM No. 3551, Bench Notes ["There is no sua sponte duty to instruct a deadlocked jury on continuing its deliberations"]; Cal. Rules of Court, rule 2.1036(a) ["After a jury reports that it has reached an impasse in its deliberations, the trial judge *may* . . . , advise the jury. . . ." (Italics added.)].) Although it might be better to use such an instruction when a jury indicates it is deadlocked, defendant provides no authority suggesting the court here was required to add any "language" to its brief response. We find the court adequately told the jury they should continue deliberating, and not feel rushed to reach a verdict.

C. There Was No Allen *Error*[6]

Defendant slightly changes tack, and focuses on one sentence from the trial court's response to the jury—"If the jury becomes hopelessly deadlocked, the court would have to declare a mistrial"—and contends this is "the functional equivalent of an '*Allen* charge,' which the California Supreme Court has forbidden for the past four decades." We are not persuaded.

In *Allen*, the United States Supreme Court approved a jury charge to a deadlocked jury that encouraged the minority jurors to reexamine their views in light of the views expressed by the majority, noting that a jury should remember that the case must at some time be decided. (*Allen, supra*, 164 U.S. at pp. 501-502.) In *People v. Gainer* (1977) 19 Cal.3d 835 (*Gainer*), disapproved in part by *People v. Valdez* (2012) 55 Cal.4th 82, 163 (*Valdez*), our Supreme Court disagreed with *Allen* in two respects. First, it found "the discriminatory admonition directed to minority jurors to rethink their position in light of the majority's views" was improper because, by telling minority jurors to consider the majority view, the instruction encouraged jurors to abandon a focus on the evidence as the basis of their verdict. (*Gainer*, at pp. 845, 851.) Second, a direction to the jury they "'should consider that the case must at some time be decided,'" was

---

[6] *Allen v. United States* (1896) 164 U.S. 492 (*Allen*).

inaccurate because of the possibility the case might not be retried. (*Id.* at pp. 851-852.) In other words, it is improper to instruct the jury in language that suggests that, if they fail to reach a verdict, the case necessarily will be retried. (*Id.* at p. 852.) The court "therefore [held] it is error for a trial court to give an instruction which either (1) encourages jurors to consider the numerical division or preponderance of opinion of the jury in forming or reexamining their views on the issues before them; or (2) states or implies that if the jury fails to agree the case will necessarily be retried." (*Ibid.*) Here, however, the trial court's response did neither.

In *People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335 (*Bryant*), the California Supreme Court revisited the issue of whether a trial court's actions and instructions to a deadlocked jury were improperly coercive. Referring to *Gainer*, the court "explained that 'coercive' actions are those involving 'a judicial attempt to inject illegitimate considerations into the jury debates [and] appeal to dissenting jurors to abandon their own independent judgment of the case against the accused,' by placing 'excessive pressure on the dissenting jurors to acquiesce in a verdict.' [Citation.] In assessing the effect of the trial court's actions, the question is 'whether the instructions tend[ed] to impose such pressure on jurors to reach a verdict that we are uncertain of the accuracy and integrity of the jury's stated conclusion. This determination of whether the instructions 'operate[d] to displace the independent judgment of the jury in favor of considerations of compromise and expediency' [citation] is perhaps best characterized as requiring a generalized assessment of the potential effect of a given instruction on the fact finding process, rather than as an attempted inquiry into the actual volitional quality of a particular jury verdict.'" (*Bryant*, at pp. 460-461.)

Here, the jury told the court it was evenly split six to six. The court's response was neutral, was not directed at either faction, and did not suggest or imply how the jurors should resolve their split. The first *Gainer* factor is absent.

Similarly, the court did not tell the jurors that "the case must at some time be decided." Instead, the court told the jury only that if they are deadlocked, the court will "have to declare a mistrial." Nothing in this isolated phrase can reasonably be seen as trying to coerce the jury into returning a verdict. Rather, the response simply reminded the jurors of their duty to attempt to reach an agreement, as evidenced by the very next sentence: "The court is asking the jury to continue its deliberations." (See *Bryant, supra*, 60 Cal.4th at p. 462 ["the court did not violate the *Gainer* principles. It merely told the jurors to deliberate further"]; cf. *People v. Miller* (1990) 50 Cal.3d 954, 994 ["'[t]he trial judge could reasonably conclude that his direction of further deliberations would be perceived as a means of enabling the jurors to enhance their understanding of the case rather than as mere pressure to reach a verdict on the basis of matters already discussed and considered'"].) Therefore, the second *Gainer* factor is also absent.

Put simply, there is nothing here to reasonably suggest the trial court's brief response "impose[d] such pressure on jurors to reach a verdict that we are uncertain of the accuracy and integrity of the jury's stated conclusion." (*Bryant, supra*, 60 Cal.4th at p. 461.) None of the improper coerciveness condemned by *Gainer* was inherent in the trial court's response to the jury's note. Any potential effect of this brief response on the fact finding process was de minimis. (See *People v. Butler* (2009) 46 Cal.4th 847, 883-884 (*Butler*).)

D. Even Assuming Allen *Error, It Was Harmless*

Here, the jury was instructed with CALCRIM No. 3550, which in part told the jurors: "It is your duty to talk with one another and to deliberate in the jury room. You should try to agree on a verdict *if you can. Each of you must decide the case for yourself*, but only after you have discussed the evidence with the other jurors. Do not hesitate to change your mind if you become convinced that you are wrong. But *do not change your mind just because other jurors disagree with you.* [¶] Keep an open mind

and openly exchange your thoughts and ideas about this case. Stating your opinions too strongly at the beginning or immediately announcing how you plan to vote may interfere with an open discussion. Please treat one another courteously. Your role is to be an impartial judge of the facts, not to act as an advocate for one side or the other." (Italics added.)

While not identically phrased, the language of CALCRIM No. 3550 implicitly told the jury exactly what defendant's trial counsel had asked for: Do not change your vote for the sake of a verdict. This instruction unequivocally told the jurors they should not feel compelled to reach a verdict merely because the other jurors disagreed, and that each was to decide for him or herself. Similarly, the jurors were not told they must reach a verdict; rather, only "if you can." "[T]he initial jury instructions adequately conveyed that jurors did not need to reach a verdict, and that they should not acquiesce in a verdict with which they did not agree. The trial court therefore did not err in not offering supplemental instructions when it emerged that the jury's verdict was not unanimous." (*People v. Reed* (2018) 4 Cal.5th 989, 1016.) Defendant's suggested additional "language" was superfluous in light of CALCRIM No. 3550. (Cf. *Butler, supra*, 46 Cal.4th at pp. 883-884 [other instructions informed jury in a way that avoided any *Gainer* error].)

Moreover, it is not reasonably likely the jurors ignored this instruction and instead considered the court's mention of a mistrial as pressure to reach a verdict at all costs. (Cf. *Valdez, supra*, 55 Cal.4th at p. 164 [no prejudice where trial court emphasized that the jurors ultimately had to reach their own conclusions].) Prejudicial error occurs "only if the reviewing court, considering 'all the circumstances under which the charge was given,' finds it 'reasonably probable' the defendant would have obtained a more favorable result absent the error." (*Ibid.*) Any supposed error in the court's isolated use of the term "mistrial" here does not make such a result reasonably probable. If error, therefore, it was harmless under any standard.

2. Substantial Evidence Supports the Jury's Lying-in-Wait Finding

Defendant next contests the sufficiency of the evidence supporting the lying-in-wait special circumstance. We find substantial evidence supports the jury's finding.

A. Standard of Review

"'To determine whether the evidence supports a special circumstance finding, we must review "'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 special circumstance allegation true '"beyond a reasonable doubt."' [Citation.]'" (*People v. Woodruff* (2018) 5 Cal.5th 697, 774; *Woodruff*; cf. *Jackson v. Virginia* (1979) 443 U.S. 307, 318-319 ["[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt"].) Our role "is a limited one." (*People v. Smith* (2005) 37 Cal.4th 733, 738.) """[W]e must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]"""" (*Id.* at pp. 738-739.) We "must accept logical inferences that the jury might have drawn from the circumstantial evidence." (*People v. Maury* (2003) 30 Cal.4th 342, 396 (*Maury*).) If more than one inference may reasonably be drawn from the evidence, we accept the inference supporting the judgment. (*People v. Manibusan* (2013) 58 Cal.4th 40, 87.)

Similarly, "[w]e resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]" (*Maury, supra*, 30 Cal.4th at p. 403.) It is the jury that weighs the evidence, assesses witness credibility, and resolves conflicts in the testimony. (*People v. Sanchez* (2003) 113 Cal.App.4th 325, 330.) "A reversal for insufficient evidence 'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support"' the jury's verdict. [Citation.]"

(*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) Simply put, an appellant "bears an enormous burden" to prevail on a sufficiency of the evidence claim. (*Sanchez,* at p. 330.)

B. Analysis

The "lying-in-wait . . . special circumstance requires '"'an intentional murder, committed under circumstances which include (1) a concealment of purpose, (2) a substantial period of watching and waiting for an opportune time to act, and (3) . . . a surprise attack on an unsuspecting victim from a position of advantage. . . .'"' [Citation.]" (*Woodruff, supra*, 5 Cal.5th at p. 774.) Here, defendant challenges the evidence supporting the first two elements: concealment of purpose, and substantial time of watching and waiting to act.

Our Supreme Court has explained the elements of the lying-in-wait special circumstance as follows: '"'"'The element of concealment is satisfied by a showing "'that a defendant's true intent and purpose were concealed by his actions or conduct. It is not required that he be literally concealed from view before he attacks the victim.'"' [Citation.]"' [Citation.] As for the watching and waiting element, the purpose of this requirement 'is to distinguish those cases in which a defendant acts insidiously from those in which he acts out of rash impulse. [Citation.] This period need not continue for any particular length "'of time provided that its duration is such as to show a state of mind equivalent to premeditation or deliberation.'" [Citation.]' [Citation.] 'The factors of concealing murderous intent, and striking from a position of advantage and surprise, "are the hallmark of a murder by lying in wait." [Citation.]' [Citation.]" (*People v. Mendoza* (2011) 52 Cal.4th 1056, 1073, fn. omitted (*Mendoza*).)

1. *Concealment of Purpose*

Defendant contends there was no evidence either he or his partner concealed their purpose from Ariet. We disagree. "'The element of concealment is satisfied by a showing '"'that a defendant's true intent and purpose were concealed by his actions or conduct. It is not required that he be literally concealed from view before he

attacks the victim.'"'" (*Woodruff, supra*, 5 Cal.5th at p. 775.) "The concealment, in that sense, "'is that which puts the defendant in a position of advantage, from which the factfinder can infer that lying-in-wait was part of the defendant's plan to take the victim by surprise.'" [Citation.]" (*People v. Johnson* (2016) 62 Cal.4th 600, 632.) The key word in this context is *plan*.

Defendant argues that because Ariet was awakened and aware of the intruders just before she was killed, the concealment of purpose element was lacking. Not so. Defendant offers no authority suggesting the concealment of purpose must last up until the actual coup-de-grâce. As discussed, the focus instead is on the concealment of a defendant's "true intent and purpose," i.e., the planning and concealed execution of that plan, that is relevant, and not how the final results played out.

Here, the jury could reasonably infer the plan was to wait until everyone in the house was asleep—literally unaware of the intruders' "true intent and purpose"—then surreptitiously enter, immobilize Ryan, and take Ariet by surprise. The fact the plan failed because Ryan's initial struggles with defendant awakened his mother does not change what defendant and his cohort did to conceal their intent and purpose to take their victim by surprise and kill her in her sleep.

2. *Watching and Waiting*

There is no fixed minimum time for the watching and waiting requirement. (*Mendoza, supra*, 52 Cal.4th at p. 1073.) '"'"The precise period of time is . . . not critical,'" so long as the period of watchful waiting is "'substantial.'"'" (See *People v. Moon* (2005) 37 Cal.4th 1, 23 [the defendant's testimony he waited 90 seconds after the victim returned home before killing her was sufficient evidence of lying in wait under the special-circumstance allegation].) Thus, "a few scant minutes . . . can suffice." (*Ibid.*)

The underlying purpose of the watching and waiting element is to establish a state of mind equal to premeditation and deliberation and to distinguish those cases in which a defendant acts insidiously from those in which he merely acts out of rash

impulse. (*People v. Stevens* (2007) 41 Cal.4th 182, 202.) This is not a case of "rash impulse."

Here, the jury could reasonably conclude that defendant and his partner were waiting outside the residence before coming inside at 3:30 a.m.[7] There were no signs of forced entry, so it is reasonable to infer the crime partners either obtained a key from Magdi, knew of the spare key, or knew the back door was unlocked. Defendant and his partner got to the upstairs floor where they expected Ariet and Ryan would be asleep. This reasonably supports a jury conclusion of "watchful waiting." (See *People v. Michaels* (2002) 28 Cal.4th 486, 516 ["Waiting and watching until a victim falls asleep before attacking is a typical scenario of a murder by means of lying in wait"]; *People v. Hardy* (1992) 2 Cal.4th 86, 164 ["The jury could reasonably infer that they chose this time of night because it could be expected the victims would be asleep"]; *People v. Ruiz* (1988) 44 Cal.3d 589, 615 [same].)

Defendant tries to distinguish these cases by pointing to individual factual dissimilarities or pointing out there was additional evidence in those cases such as a confession. However, this myopic view misses the signal importance of one very probative fact that *is* present in this case: defendant's primary role in this murder plot was to ensure *Ryan* did not interfere with what the killers had been hired to do—quickly and quietly kill Ariet. The basic plan was to wait until late at night, when Ariet was asleep, enter the house, slip into her bedroom without her waking, kill her, and leave. But Ryan created a serious complication.

Whether Ryan's return at 1:30 a.m. was unexpected, or defendant and his partner were waiting for him to come home and go to bed, they were aware Ryan lived in the house and he had to be dealt with before they could complete their murder-for-hire

---

[7] After the intruders left, Ryan heard a car with a "loud muffler" start up and drive away, pointing to an inference they had arrived together.

scheme. That meant waiting until Ryan was also asleep, entering his bedroom first, neutralizing him, and only then proceeding with the planned killing of Ariet without interference. Defendant's assurances to Ryan that he was not going to be killed shows they had planned beforehand what to do with Ryan. Defendant's statement, "I know your circumstances. I know what you're going through," supports an inference that the killers had been informed about the living arrangements at the house—perhaps by Magdi—and had needed to make contingency plans for what to do if Ariet was not alone. This required both concealment and waiting until both Ariet and Ryan were asleep.

Significantly, defendant came equipped with the duct tape he would use to immobilize Ryan while his cohort accomplished the planned murder—again showing premeditation and deliberation. Although the killer threatened Ryan and told him he would be killed if he did not stop resisting defendant's attempts to subdue him, defendant assured Ryan he would not be killed, stating "I know your circumstances. I know what you're going through. I'm not going to kill you." This is all consistent with a carefully preplanned effort, not a "rash impulse" killing. And in order to carry out their plan, the killers had to watch and wait for the most opportune moment—when *both* Ariet and Ryan were asleep.

However, at this point the plan started to go awry. Awakened by Ryan's screaming, Ariet came down the hallway, telling the intruders to "take anything you want." The killer grabbed Ariet in a "bearhug" and took her back to her bedroom where she was killed. Defendant finished immobilizing Ryan with the duct tape and Ryan's shoelace, placed him in the closet, and watched over him while the killer completed his grim task and the plan was completed. Defendant suggests this unexpected event negates both concealment of purpose and watchful waiting, but we disagree. As noted above, this unplanned incident did not change what defendant and his cohort did to conceal their intent and purpose to take their victim by surprise and kill her in her sleep. Similarly, it

did not affect the fact they waited until both Ariet and Ryan were asleep before beginning their fatal intrusion.

The evidence amply supports an inference that, in order to neutralize Ryan, the intruders had to wait until he too was asleep so as to quickly take full advantage of the situation before putting the ultimate plan into motion. From this, the jury could find defendant and his cohort spent sufficient time watching and waiting to show a state of mind akin to premeditation and deliberation, and inconsistent with "rash impulse." Nothing more is required.

The two contested elements of the lying-in-wait special circumstance are supported by substantial evidence.

3. The Statute of Limitations Bars the Assault and False Imprisonment Convictions

Defendant next claims his convictions for the aggravated assault and false imprisonment of Ryan must be reversed because criminal proceedings on those charges did not commence until after the relevant statute of limitations had expired. We agree.

The pleadings in this case alleged the charged crimes were committed on or about September 29, 2004. A felony complaint was filed on April 2, 2013, and an arrest warrant was issued for defendant on April 3, 2013. Defendant was arraigned on the complaint on June 21, 2013. Finally, the information was filed on November 17, 2014.

Because both false imprisonment by violence and aggravated assault are offenses punishable by imprisonment in the state prison for less than eight years, the statute of limitations for both offenses is the same: three years.[8] (§§ 18, subd. (a), 237, subd. (a), 245, subd. (a)(1), 801.) The limitation period is determined by the maximum punishment for the offense; enhancements, including for prior convictions and strikes, are disregarded. (§ 805, subd. (a).) As a result, prosecution for these two offenses had to

---

[8] Prosecution for conspiracy to commit murder and murder is not limited, and may be commenced at any time. (§§ 182, subd. (a), 190, subd. (a), 799, subd. (a).)

have been "commenced" within three years of their commission, i.e., before October 1, 2007.[9] (*Ibid.*; see *People v. Zamora* (1976) 18 Cal.3d 538, 574 (*Zamora*) ["[S]tatutes of limitation are to be strictly construed in favor of the accused"].)

In felony cases, "prosecution for an offense is commenced when any of the following occurs: [¶] (a) An indictment or information is filed. [¶] . . . [¶] (c) The defendant is arraigned on a complaint that charges the defendant with a felony. [¶] (d) An arrest warrant or bench warrant is issued . . . . " (§ 804.)[10] The earliest qualifying event here was when the arrest warrant issued for defendant on April 3, 2013—more than eight years after the offenses were committed.

The parties agree that nothing in the record shows defendant waived the statute of limitations as to the assault and false imprisonment charges. However, nothing indicates defendant ever raised a statute of limitations claim.[11] Even so, the parties also agree that when the charging document on its face shows that an offense is time-barred, "a defendant may not inadvertently forfeit the statute of limitations and be convicted" of such an offense. (*People v. Williams* (1999) 21 Cal.4th 335, 338 (*Williams*); cf. *Zamora, supra*, 18 Cal.3d at p. 547 ["a conviction, even if based on a plea of guilty, is subject to

---

[9] September 30, 2007 was a Sunday.

[10] Prior to 2007, section 804, subdivision (c) provided that prosecution commenced when "[a] case is certified to the superior court" following a preliminary hearing. As a result, arraignment on a felony complaint did not commence an action. In 2009, subdivision (c) was slightly altered to allow for "commencement" to include the arraignment on the felony complaint. (Stats. 2008, ch. 110, § 1.) Neither version of subdivision (c) aids the prosecution here.

[11] At arraignment on both the complaint and the information, defendant "reserve[d] all motions," and "invoke[d] his/her state, federal and constitutional rights." We need not decide whether this sufficiently preserved a statute of limitations claim because, as discussed, it may be raised in the first instance on appeal. However, it strongly suggests there was no waiver of the statute of limitations.

collateral attack if the charge was originally barred by the applicable limitation period"].) The issue is therefore properly before us.

The Attorney General speculates "the present record *may* be incomplete," and we should remand this matter "to the trial court for a hearing to determine whether the statute of limitations was tolled or waived" as to these two charges. (Italics added.) We are not persuaded.

First, the record in this matter is quite complete, and the Attorney General offers nothing to suggest what could possibly be missing or where it would be found. Because the parties agree there is nothing in the record showing a waiver, remand for further inquiry on this point would be nugatory.

Second, there are no statutory tolling provisions that could be applied to these two offenses. (See § 803 [the exclusive list of the only offenses and factual situations where criminal statutes of limitations are tolled].) While the Attorney General opines the record "may" be incomplete, he does not ever mention section 803, nor discuss how a more "complete" record would or could change the ineluctable conclusion that the statute of limitations for these two offenses was not tolled and had expired when this action was commenced.

Third, "at trial the prosecution bears the burden of *proving* that the charged offense was committed within the applicable period of limitations." (*People v. Lopez* (1997) 52 Cal.App.4th 233, 248, italics added.) Similarly, "[t]he People also bear the [same] burden to hold a defendant to answer before a magistrate . . . . '[I]n order to hold a defendant over for trial the People bear the burden of producing evidence . . . which demonstrates that there is probable cause to believe that the prosecution is not barred by the statute of limitations.' [Citation.]" (*Id.* at pp. 248-249.) There is no such proof anywhere in the appellate record.

Finally, "the *accusatory pleading* must allege [*f*]*acts* showing that the prosecution is not barred by the statute of limitations." (*Zamora, supra*, 18 Cal.3d at p.

564, fn. 26, first italics added; *People v.* Crosby (1962) 58 Cal.2d 713, 724-725 [if a period of time in excess of that permitted by the statute has elapsed since the commission of the offense, further facts must be *alleged* to show the People's entitlement to rely on the tolling doctrine].) There are no such allegations in the pleadings in this case.

The Attorney General cites *Williams,* where the Supreme Court did remand a matter for an inquiry into whether the statute of limitations was either waived or tolled. (*Williams, supra*, 21 Cal.4th at p. 345.) However, *Williams* is inapposite.

In *Williams*, the defendant was charged with perjury (*Williams, supra*, 21 Cal.4th at p. 338), an offense with a three year statute of limitations, but one potentially subject to tolling based on the date of discovery. (See §§ 118, 126, 801, 803, subd. (c)(2).) The information in that matter was filed more than three years after the alleged date of offense, but it contained no language relevant to the statute of limitations. (*Williams,* at p. 338.) However, the defendant did not ever raise the issue.

On review, the core question before the Supreme Court was "whether 'the statute of limitations in a criminal case is an affirmative defense which is forfeited if not raised before or during trial.'" (*Williams, supra*, 21 Cal.4th at p. 339.) After concluding it was not, the court moved on to address whether the statute of limitations had expired in the case. However, it found the record was insufficient to resolve that question and therefore affirmed the Court of Appeal's decision to remand the matter to the trial court to make that determination. (*Id.* at pp. 338, 347.)

The court observed that in the Court of Appeal, "the Attorney General asserted two facts not alleged in the information that, if true, would make the action timely: (1) an arrest warrant, which 'commenced' the prosecution [citation], issued before the three years expired; and (2) the prosecution commenced within three years after the crime was first discovered. The Court of Appeal was unable to determine from the appellate record whether the action was, in fact, time-barred, and it remanded for the trial court to make that determination." (*Williams, supra*, 21 Cal.4th at p. 339.) The

Supreme Court "agree[d] on the need for an adequate record," and found "[t]he record here is utterly inadequate. No reviewing court can meaningfully assess whether the statute of limitations had expired . . . . " (*Id.* at p. 344.)

Williams does not assist the prosecution here because our record is more than adequate to make that assessment. We know the pleadings do not allege facts to counter the otherwise facially apparent lapse of the statute of limitations for these two offenses. We also know when the arrest warrant was issued. Similarly, as discussed, neither aggravated assault nor false imprisonment are included in section 803's exclusive list of specific offenses subject to tolling. (See § 803, subd. (a) ["Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason"].) Likewise, although this is a "cold case" in which DNA evidence was used to connect defendant with the offenses, the DNA-related tolling provisions of section 803, subdivision (g), only apply to certain sex offenses, and then only where the DNA evidence "is analyzed . . . no later than two years from the date of the offense." (§ 803, subd. (g)(1)(A), (B).)[12]

The Supreme Court's concern in *Williams* was the lack of an adequate record to resolve the statute of limitations issue on appeal. (*Williams, supra*, 21 Cal.4th at p. 344.) Here, the record is more than adequate to conclude the pleadings facially show the statute of limitations had expired on the assault and false imprisonment charges. No special tolling allegations were pled or proven—indeed, none exists—and nothing in

---

[12] Furthermore, even if defendant had been out of the state during the time between the charged offenses and the warrant for his arrest was issued, section 803, subdivision (d), which tolls the statute of limitations when a defendant is absent from the state "when or after the offense is committed," does not apply because it only tolls the limitation statute for a maximum of three years—for a total limitation period in this case of six years, and not the eight-plus years that elapsed between the offenses and the arrest warrant. The remainder of section 803's tolling provisions are also inapplicable.

the record shows defendant waived the statute of limitations. Remand in such circumstances would be a futile act, and one we decline to do.

4. The Two Five-Year Enhancements Imposed on the Assault Charge Must Be Stricken

Finally, defendant contends his aggravated assault conviction was not for a qualifying serious felony and, as a result, the two five-year serious felony enhancements imposed on that charge under section 667, subdivision (a) could not be imposed. Because the assault conviction has been reversed, however, those enhancements must be stricken in any event; there is nothing left to "enhance."

DISPOSITION

The convictions for aggravated assault and false imprisonment are reversed, and the two section 667, subdivision (a) serious felony enhancements imposed on the assault charge are vacated. In all other respects, the judgment is affirmed. The trial court shall prepare an amended abstract of judgment and forward a certified copy to the Department of Corrections and Rehabilitation.

THOMPSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

IKOLA, J.

APPENDIX A

SUPREME COURT
FILED

NOV 1 0 2020

Jorge Navarrete Clerk

Deputy

Court of Appeal, Fourth Appellate District, Division Three - No. G056928

S264897

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

ANTHONY EDWARD BRIDGET, Defendant and Appellant.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

Appendix C