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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. DONTE SANDERS et al., Defendants and Appellants.	B280271 (Los Angeles County Super. Ct. No. TA136164)

APPEALS from judgments of the Superior Court of Los Angeles County. Allen Joseph Webster, Jr., Judge. Affirmed in part and remanded in part with directions.

Victoria H. Stafford, under appointment by the Court of Appeal, for Defendant and Appellant Donte Sanders.

Janyce Keiko Imata Blair, under appointment by the Court of Appeal, for Defendant and Appellant Aerick Shorty.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews, Scott A. Taryle, and Ryan M. Smith, Deputy Attorneys General, for Plaintiff and Respondent.

In an information filed by the Los Angeles County District Attorney's office, defendants and appellants Donte Sanders (Sanders) and Aerick Shorty (Shorty) were charged with murder (Pen. Code, § 187, subd. (a); count 1),[1] three counts of willful, deliberate, and premeditated attempted murder (§§ 664/187, subd. (a); counts 2, 3, & 4), and shooting at an inhabited dwelling (§ 246; count 5). Shorty (count 6) and Sanders (count 7) were also charged each with one count of possession of a firearm by a felon (§ 29800, subd. (a)(1)). As to counts 1 through 5, it was further alleged that defendants committed the charged offenses for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22, subd. (b)(1)(C)). In count 1, it was alleged that defendants personally used a firearm (§ 12022.53, subd. (b)), personally and intentionally discharged a firearm (§ 12022.53, subd. (c)), and personally and intentionally discharged a firearm causing death (§ 12022.53, subd. (d)). In counts 1 through 4, it was also alleged that a principal used a firearm (§ 12022.53, subds. (b) & (e)(1)), personally and intentionally discharged a firearm (§ 12022.53, subds. (c) & (e)(1)), and personally and intentionally discharged a firearm causing death (§ 12022.53, subds. (d) & (e)(1)). Finally, the information alleged that Sanders had suffered two prior serious felonies (§ 667, subd. (a)(1)) and two prior serious or violent felonies (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), and that Shorty had suffered two prior serious felonies (§ 667, subd. (a)(1)) and one prior serious or violent felony (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)).

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

The jury found both defendants guilty as charged. In bifurcated proceedings, the trial court found defendants' prior conviction allegations to be true. Defendants were each sentenced to 260 years to life in state prison.

Sanders was awarded 738 actual days of presentence custody credit.

Defendants timely filed notices of appeal. Both defendants argue: (1) The evidence was insufficient to find that either of them premeditated the shooting; and (2) Insufficient evidence supports the finding that they committed the crimes to benefit the gang.

Separately, Sanders argues: (1) The trial court erred in failing to hold a *Marsden*[2] hearing and in requiring Sanders to represent himself at the new trial motion and at sentencing; (2) Sanders's waiver of his right to counsel was not knowing, intelligent, and voluntary; (3) the four-year term for a gang enhancement in count 7 must be stricken because no gang enhancement was pled or proven in count 7; and (4) he is entitled to two more days in presentence credits.

Shorty separately argues: (1) The gang expert's opinion that Shorty is a Black Pea Stone member who acted in association with another gang member was impermissibly based on case-specific hearsay in violation of *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*) and *Crawford v. Washington* (2004) 541 U.S. 36; and (2) the prosecutor committed prejudicial misconduct in closing argument.[3] He also joins in all arguments raised by Sanders.

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[2] *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

[3] Sanders joins in this argument.

The judgment as to Shorty is affirmed. As to Sanders, the matter is remanded so that (1) the trial court may properly orally pronounce his sentence as to count 7; (2) he may be awarded two additional days of presentence custody credit; and (3) the abstract of judgment and two minute orders can be amended to correct clerical errors. In all other respects, the judgment against him is affirmed.

FACTUAL BACKGROUND

Prosecution's Evidence

The Murder and Attempted Murder

On December 27, 2014, Jessica Reed (Reed) was living in a four-bedroom apartment in Los Angeles. A number of people shared the apartment with her, including Reed's cousin Antonio Robinson (Robinson), Robinson's girlfriend Christina Rhodes (Rhodes), and Maurice Reliford (Reliford). Reed's best friend, Chasity Wimley (Wimley), had lived there until the two had a falling out over the rent. Shorty, who is Wimley's brother, had previously lived at the apartment along with Shorty and Wimley's uncle, Sanders. Reed knew that Shorty was a Black Pea Stones street gang member and that Sanders, who has gang tattoos, was a Van Ness Gangsters gang member.

After Wimley moved out, Reed believed that Wimley was talking about her on the Internet and with coworkers. At approximately 7:30 a.m. that day, Reed went to Wimley's apartment to confront her. Certain friends and family, including Reed's mother, accompanied Reed. Wimley, her boyfriend, and her cousin (Shalonna Meadows (Meadows)) were home. Initially, Reed and Wimley talked. At some point, Meadows attacked Reed's mother. However, Reed's mother beat up Meadows. After the fight, Reed and her group left.

At around 9:30 a.m., Wimley's mother called Reed and indicated that they were going over to Reed's apartment. Wimley showed up with her mother, her mother's boyfriend, Meadows, her sister, and Ebony Monterossa (Monterossa). When they arrived, they began beating on Reed's door and windows. When Reed looked out the window, she saw Rhodes running from the parking lot towards the apartment door. Rhodes was attacked by Wimley, Wimley's mother, and Monterossa. Reed left the apartment to help Rhodes. Reed punched Wimley in the face and body, and then dragged Wimley by the head towards the gate.

Others began fighting. Reed's aunt Lisa Simpson was fighting with Wimley's sister; Rhodes was fighting with Wimley's mother; Reed's friend Janelle Freelow was fighting with Monterossa. Reed's friend Corri Hardy (Hardy)[4] punched Wimley's mother. Wimley's mother's boyfriend then punched Hardy. Wimley's group then left.

At around 4:15 p.m., Wimley and a group of about 25 others returned to Reed's apartment. Shorty and Sanders were with her. Shorty was holding a nine-millimeter semiautomatic handgun. Reliford was sitting in his car with Aaron Howard (Howard) and Robinson. Raven Williams (Williams) was standing in front of the car. When defendants arrived, the three got out of the car.

Shorty and Sanders were standing alongside Wimley. Shorty asked Reliford and the other men where they were from. When no one answered, Shorty said, "'BPS Jungles.'" Shorty then asked Robinson, "'Who the f*** jumped my mom?'"

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[4] Hardy and Robinson each testified that they had known Shorty when he lived with Reed. Both testified that Shorty had admitted that he was a Black Pea Stone gang member.

Robinson answered that no one had jumped his mom, stating, "'This was a bitch fight.'" Shorty then said that he was not there to talk. Reliford then asked defendants, "'Why did you guys bring guns to a girl fight?'"

Reliford told defendants, "'Well, then, bust then, nigga, bust.'" Sanders looked at Shorty as though asking whether he was going to do anything. Sanders then pushed Shorty aside and pulled a large revolver out of his waistband. As Reliford turned toward Reed's mother, who was grabbing him and telling him to stop arguing, Sanders opened fire on Reliford, shooting him in the back. Shorty also started shooting at Reliford. As Reliford turned back around, he was shot in the chest. Shorty continued to fire as he and Sanders ran for the gate. Howard, Williams, and Hardy were all hit by gunfire. Approximately 15 shots were fired.

When the shooting had stopped, Reliford was dead.

Gang Evidence

Los Angeles Police Department Officer Joshua Medina testified as a gang expert for the prosecution. According to Officer Medina, the Black Pea Stones and Van Ness are both Blood gangs in South Central Los Angeles. They are allies, share territory, and their members are often related to one another. Both gangs have similar hierarchies. It is not unusual for the two gangs to work together to commit a crime. Fear and respect are important within each gang.

There are about 300 Black Pea Stone gang members. They use the Bloods hand signal. Their tattoos include the palm tree and the Boston Red Sox and Bentley "B." Their territory is commonly referred to as the "jungle area" or the "jungles." Van Ness has approximately 100 members. Their symbols

include the Boston "B," the Vancouver Grizzlies emblem, and the number "54." The Neighborhood Crips are a rival to both gangs.

According to Officer Medina, the primary activities of the Black Pea Stones gang are burglaries, robberies, home invasions, shootings, including murders and attempted murders, assaults with a deadly weapon, and shooting into an inhabited dwelling. Van Ness's primary activities include robberies, home invasions, burglaries, shootings, and narcotic sales.

Officer Medina opined that Sanders was a Van Ness gang member based on his self-admission, gang tattoos, and officers' encounters, including his own 15 to 20 contacts with Sanders. Sanders went by the moniker Itty Bitty Moe. Officer Medina believed that Shorty was a Black Pea Stone gang member that used the moniker Little Joe Moses, based on his review of Shorty's Facebook account and his contacts with other officers. Shorty's Facebook account had images of him with other gang members, throwing gang signs, and wearing gang attire.

Officer Medina testified that he became familiar with Shorty after two shooting incidents were simulcast to police officers. Specifically, Shorty claimed to Officer Leo Guillen that he had been shot at two different locations. Officer Guillen shared that information with Officer Medina, who then testified about what Officer Guillen had told him at trial.

The prosecution presented certified documents indicating a July 19, 2013, conviction of Black Pea Stone and Van Ness gang member Anthony Watkins for attempted burglary; a January 5, 2011, conviction of Black Pea Stone gang member Marquise Jewel Turley (Turley) for attempted murder; a March 15, 2013, conviction of Van Ness gang member Darrell Cain for possession of marijuana and ammunition; and a September 26, 2012,

conviction of Brim gang member Bryan Smith (Smith) for attempted murder, shooting at an inhabited dwelling, and being a felon in possession of a firearm. The Brim criminal street gang is an "'umbrella'" gang of the Van Ness gang.

Given a hypothetical mirroring the facts of the instant case, Officer Medina opined that the crime was committed in association with and for the benefit of the gang. He based his conclusion on the fact that defendants knew each other and of the other's gang affiliation, that Sanders (the older defendant) realized that Shorty (the younger defendant) was not reacting when challenged, which showed that he was afraid and weak, and that after Sanders took over and started firing, Shorty joined in the shooting. Officer Medina also relied on the fact that when defendants arrived, they challenged Reliford and the others as to their gang association.

Defense Evidence

Wimley testified on behalf of her brother Shorty and her uncle Sanders. She said that she had been friends with Reed for over 10 years and that they lived together. They had a disagreement over rent and paying the utilities. Wimley ended up moving out.

Wimley described the first two fights. During the second fight, the men were not involved, but were encouraging Reed and the others. Wimley's mother suffered a black eye during the fight. At approximately 4:30 p.m., after communicating with Robinson on Facebook, Shorty decided to go to Reed's apartment to talk to Robinson. When Shorty arrived with Wimley, Sanders was already across the street from Reed's apartment. As soon as they arrived, Reliford and four men jumped out of their car. Reliford was yelling, "'On 60 Crip[.] I'm gon' kill you niggas,'"

and took off his shirt. Wimley saw a gun on Reliford's hip. She jumped in front of Shorty, and when she heard gun shots, she started running. Shorty was running in front of her. He did not have a gun.

DISCUSSION

I. *Substantial evidence supports defendants' convictions for premeditated murder and attempted murder*

It is well-established that an appellant "bears a massive burden in claiming insufficient evidence" because the reviewing court's "role on appeal is a limited one." (*People v. Akins* (1997) 56 Cal.App.4th 331, 336.) We review the record in the light most favorable to the judgment and determine whether it discloses substantial evidence such that a rational trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Earp* (1999) 20 Cal.4th 826, 887.) We presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. (*People v. Osband* (1996) 13 Cal.4th 622, 690.) We do not reweigh evidence, reappraise the credibility of witnesses, or resolve conflicts in the evidence, as these functions are reserved for the trier of fact. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) The same standard applies to the review of circumstantial evidence. (*People v. Stanley* (1995) 10 Cal.4th 764, 792.)

Murder is the unlawful killing of a human being with malice aforethought. (§ 187.) First degree murder includes any unlawful and intentional killing that was "willful, deliberate and premeditated." (§ 189.) "An intentional killing is premeditated and deliberate if it occurred as the result of preexisting thought and reflection rather than unconsidered or rash impulse." (*People v. Stitely* (2005) 35 Cal.4th 514, 543.)

Attempted murder requires the specific intent to kill and the commission of a direct but ineffectual act toward accomplishing the intended killing. (*People v. Smith* (2005) 37 Cal.4th 733, 739.) "One who intentionally attempts to kill another does not often declare his state of mind either before, at, or after the moment he [acts]. Absent such direct evidence, the intent obviously must be derived from all the circumstances of the attempt, including the putative killer's actions and words." (*People v. Lashley* (1991) 1 Cal.App.4th 938, 945–946.)

The mental state required for attempted murder can be satisfied by an intent to kill a particular person or by an intent to kill someone. Thus, a person who intends to kill can be guilty of attempted murder even if that person has no specific target in mind. (*People v. Ervine* (2009) 47 Cal.4th 745, 789; *People v. Stone* (2009) 46 Cal.4th 131, 136.)

"[A] primary intent to kill a specific target does not rule out a concurrent intent to kill others." (*People v. Bland* (2002) 28 Cal.4th 313, 331, fn. 6.) California courts have repeatedly permitted multiple convictions for attempted murder based on the firing of just a single shot as long as the victims were in the same line of fire. (See, e.g., *People v. Smith, supra,* 37 Cal.4th at p. 743; *People v. Leon* (2010) 181 Cal.App.4th 453, 465; *People v. Chinchilla* (1997) 52 Cal.App.4th 683, 690.)

The California Supreme Court has identified three factors often considered in assessing whether there has been sufficient evidence of premeditation and deliberation: motive; planning activity; and the manner of killing or attempting to kill. (*People v. Anderson* (1968) 70 Cal.2d 15, 26–27.)

Here, Sanders had a strong motive to kill Reliford and the others. It could have started out as vengeance, given Sanders

and Shorty's familial relationship with Wimley. And the motive could also have been related to their status as gang members. Reliford had questioned Sanders and Shorty as to why they needed to "'bring guns to a girl fight.'" As gang members, they felt disrespected. When Shorty failed to act, Sanders came out firing. Shorty then quickly joined him—to redeem himself and not lose his respect in the gang.

Second, evidence of planning activity could be inferred from the fact that defendants brought guns to the location where Wimley (Shorty's sister and Sanders's niece) had lived and was now involved in a fight. (*People v. Young* (2005) 34 Cal.4th 1149, 1183 [possession of a loaded gun provides evidence of planning from which "the jury could infer that defendant 'considered the possibility of murder in advance'"].)

Third, there is ample evidence to support an inference that defendants had an opportunity to reflect and deliberate since Reliford urged them to engage in a fistfight rather than use guns. And at least two bystanders, including Wimley, urged defendants to put the guns away just moments before Shorty shot Reliford in the back.

This evidence is sufficient to support the jury's finding that the murder and attempted murders were premeditated and deliberated.

II. *Sufficient evidence supports the inference that the crimes were committed in association with a gang*

Sanders contends that the evidence failed to prove that he committed the crimes for the "benefit of, at the direction of, or in association" with a gang "with the specific intent to promote, further, or assist in any criminal conduct by gang members." (§ 186.22, subd. (b)(1).)

His challenge lacks merit. The evidence supported an inference that defendants were members of a criminal street gang who shot at rival gang members in retaliation for being disrespected. (*People v. Livingston* (2012) 53 Cal.4th 1145, 1171.) Reliford asked why Shorty and Sanders would bring guns to a "girl fight," thereby disrespecting them. When Shorty showed weakness by not responding, Sanders pushed him out of the way and started shooting. Shorty then joined in and fired at the victims.

Moreover, because the shooter identified himself as a Black Pea Stone to the victims, the gang stood to benefit by solidifying its reputation as a violent gang that would not be disrespected. (See, e.g., *People v. Margarejo* (2008) 162 Cal.App.4th 102, 110.) And, because both Shorty and Sanders participated in the shooting together, Sanders necessarily committed the crimes in association with their affiliated gangs. (*People v. Albillar* (2010) 51 Cal.4th 47, 62.)

Finally, the People presented ample evidence that defendants committed the crimes "with the specific intent to promote, further, or assist in any criminal conduct by gang members." (§ 186.22, subd. (b)(1).) They drove to Reed's apartment looking for trouble. They were armed when they approached Reliford and the other victims. And given a hypothetical mirroring the facts of the instant case, Officer Medina opined that the crimes were committed with the specific intent to promote or further criminal activity.

III. *The gang expert's opinion does not violate Sanchez*

Shorty contends that Officer Medina's expert gang opinion that he was a Black Pea Stone gang member was impermissibly based on case-specific hearsay, in violation of *Sanchez*.

A. *Sanchez*

In *Sanchez*, *supra*, 63 Cal.4th at page 684, our Supreme Court held that "When any expert relates to the jury case-specific out-of-court statements, and treats the content of those statements as true and accurate to support the expert's opinion, the statements are hearsay." (*Id*. at p. 686.) The statements must therefore be independently proven or covered by a hearsay exception to be admissible. (*Ibid*.) "Case specific facts are those relating to the particular events and participants alleged to have been involved in the case being tried." (*Id*. at p. 676.) Additionally, "[i]f the case is one in which a prosecution expert seeks to relate *testimonial* hearsay, there is a confrontation clause violation unless (1) there is a showing of unavailability and (2) the defendant had a prior opportunity for cross-examination, or forfeited that right by wrongdoing." (*Id*. at p. 686.) Testimonial statements are "'out-of-court analogs, in purpose and form, of the testimony given by witnesses at trial.'" (*Id*. at p. 685.)

Sanchez nevertheless acknowledged that "experts may relate information acquired through their training and experience, even though that information may have been derived from conversations with others, lectures, study of learned treatises, etc. This latitude is a matter of practicality." (*Sanchez, supra,* 63 Cal.4th at p. 675.) And, "[a]ny expert may still *rely* on hearsay in forming an opinion, and may tell the jury *in general terms* that he did so." (*Id*. at p. 685.) *Sanchez* clarified: "Our decision does not call into question the propriety of an expert's testimony concerning background information regarding his knowledge and expertise and premises generally accepted in his field. Indeed, an expert's background knowledge and experience

is what distinguishes him from a lay witness, and, as noted, testimony relating such background information has never been subject to exclusion as hearsay, even though offered for its truth. Thus, our decision does not affect the traditional latitude granted to experts to describe background information and knowledge in the area of his expertise. Our conclusion restores the traditional distinction between an expert's testimony regarding background information and case-specific facts." (*Ibid.*)

B. Analysis

1. *Officer Medina's opinion that Shorty was a Black Pea Stone gang member*

Shorty challenges Officer Medina's opinion that he was a Black Pea Stone gang member. It seems that he is arguing that Officer Medina impermissibly relied on hearsay to form this opinion. But, as set forth above, *Sanchez* expressly approved of this type of expert testimony. (*Sanchez*, *supra*, 63 Cal.4th at p. 685.)

2. *Officer Medina's testimony that he learned of Shorty through a simulcast*

Shorty next contends that Officer Medina's testimony that he learned of Shorty through a simulcast of a prior shooting incident violates *Sanchez*. Again he is mistaken.

Officer Medina's testimony that he learned of Shorty through a simulcast did not convey any hearsay. He only testified that he became familiar with Shorty through simulcasts.

3. *Officer Guillen's statements to Officer Medina*

Shorty further challenges Officer Medina's testimony that he was told by Officer Guillen that Shorty claimed to have been shot at two different locations. This testimony involved two layers of hearsay—Shorty's statement to Officer Guillen that he

has been shot at, and Officer Guillen's statement to Officer Medina that Shorty made the first statement to Officer Guillen.

Shorty's statement to Officer Guillen that he had been shot at two locations is subject to the party admission exception to the hearsay rule; thus, that portion of Officer Medina's testimony was admissible. (Evid. Code, § 1220.) And that statement does not violate the confrontation clause. (*People v. Jennings* (2010) 50 Cal.4th 616, 661–662 [a defendant's own admissions do not implicate the confrontation clause].)

Officer Guillen's statement to Officer Medina about Shorty's statement was case-specific hearsay not covered by any hearsay exception and violates *Sanchez*. But, that error does not constitute a violation of the Sixth Amendment confrontation clause because Shorty has not shown that that hearsay was testimonial. (*Sanchez*, *supra*, 63 Cal.4th at p. 689 ["Testimonial statements are those made primarily to memorialize facts relating to past criminal activity, which could be used like trial testimony. Nontestimonial statements are those whose primary purpose is to deal with an ongoing emergency or some other purpose unrelated to preserving facts for later use at trial"]; *People v. Ochoa* (2017) 7 Cal.App.5th 575, 585.)

But, as the People concede, the admission of this testimony violated state law. Thus, we must now review that error for prejudice pursuant to *People v. Watson* (1956) 46 Cal.2d 818, 836, which requires reversal if "'it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.'" (*People v. Jeffrey G.* (2017) 13 Cal.App.5th 501, 510.) We conclude that even without this portion of Officer Medina's testimony, Shorty would not have

obtained a more favorable result. There was ample testimony of his gang affiliation and that the shooting was gang-motivated.

4. *Officer Medina's testimony that Shorty's nickname was Little Joe Moses*

Shorty contends that another officer told Officer Medina that he was known as Little Joe Moses and was a cousin of Joe Moses, a Van Ness gang member; thus, Officer Medina's testimony violates *Sanchez*. We disagree.

Officer Medina testified that he learned of Shorty's nickname and his relationship to Joe Moses during his investigation, which included being told things by another officer. But, it was from Officer Medina's personal observations of Shorty's Facebook photographs that he learned Shorty's nickname was Little Joe Moses and that he was Joe Moses's cousin. Thus, Shorty's challenge to Officer Medina's testimony fails.

Moreover, at least three other witnesses (Reed, Hardy, and Robinson) testified before Officer Medina testified that Shorty had admitted that he was a Black Pea Stone gang member. Because their testimony was properly admitted and independently established Shorty's gang membership, Officer Medina's later testimony was proper. (*Sanchez*, *supra*, 63 Cal.4th at p. 686 [an expert cannot relate as true case-specific facts unless they are independently proven by competent evidence]; *People v. Jeffrey G.*, *supra*, 13 Cal.App.5th at p. 510 ["If prior unobjected testimony supported the prosecution experts' case-specific testimony, the testimony was not objectionable under *Sanchez*"].)

5. *Officer Medina's viewing of Shorty's Facebook page*

Officer Medina's testimony about his observations from Facebook did not violate *Sanchez*. He testified as to what he personally viewed in photographs. And, he drew his conclusions from what he saw. The fact that Officer Medina was led to the photographs by another officer does not make his testimony hearsay.

6. *Officer Medina's opinion that a hypothetical shooting was committed for the benefit of the Black Pea Stone and Van Ness gangs*

Shorty claims that Officer Medina improperly opined that the murder was committed for the benefit of the Black Pea Stone and Van Ness gangs. He asserts that this opinion was invalid under *Sanchez* because it was based on matters that Officer Medina learned through hearsay. We disagree.

First, Officer Medina did not testify that Shorty's murder of Reliford was committed for the benefit of his gang. Rather, he testified that a hypothetical crime, based on the facts in evidence, would have benefitted the gang. Expert opinion testimony based on hypothetical questions does not contravene the hearsay rule or the confrontation clause under *Sanchez*. (*Sanchez*, *supra*, 63 Cal.4th at pp. 676, 684–685.)

Second, *Sanchez* was not even implicated because Officer Medina's testimony on this point consisted only of his opinion, not case-specific facts. (*Sanchez*, *supra*, 63 Cal.4th at pp. 685–686.)

7. *Testimony regarding the gang membership of the perpetrator of a predicate crime is not case-specific under Sanchez*

When asked how he was familiar with Turley, Officer Medina testified: "One of the gang detectives that work the

Hoover criminal task force was the gang expert on that case. I have also spoken to—and I spoke to him regarding the case and about Mr. Turley. I have also spoken to arresting officers." Officer Medina's opinion was that Turley was a member of the Black Pea Stones. Shorty challenges Officer Medina's testimony that Turley, the perpetrator of one of the predicate crimes that supports the gang enhancement, was a gang member. He contends that because Officer Medina did not personally know Turley, he failed to establish Turley's conviction as a qualifying predicate crime.

The problem with Shorty's argument is that Officer Medina did not convey any actual hearsay; he merely stated that after speaking with other officers, he formed an opinion that Turley was a gang member. *Sanchez* permits experts to give opinions based on hearsay. (*Sanchez*, *supra*, 63 Cal.4th at p. 685.)

Even if Officer Medina's testimony regarding Turley's gang membership conveyed hearsay, it was not the sort of case-specific hearsay prohibited by *Sanchez*. *Sanchez* expressly allows experts to testify in hearsay form about "general knowledge in [their] field of expertise." (*Sanchez*, *supra*, 63 Cal.4th at p. 676; see also *People v. Meraz* (2016) 6 Cal.App.5th 1162, 1175 [expert testimony about a gang's "pattern of criminal activity" was not case-specific because it did not pertain to the "particular events and participants alleged to have been involved in the case being tried"], review granted on unrelated issue 3/22/17, S239442; but see *People v. Ochoa*, *supra*, 7 Cal.App.5th at pp. 588–589; *People v. Lara* (2017) 9 Cal.App.5th 296, 337.)

IV. *The predicate crimes were supported by substantial evidence*

Shorty contends that the prosecution presented insufficient evidence to prove the predicate crimes of the Black Pea Stones.

A. Applicable law

The appellate court reviews "the sufficiency of the evidence to support an enhancement using the same standard we apply to a conviction." (*People v. Howard* (2010) 51 Cal.4th 15, 34.) Thus, as set forth above, we "review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578.)

For purposes of the gang enhancement imposed pursuant to section 186.22, "'criminal street gang' means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of [specified] criminal acts enumerated in . . . subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in, a pattern of criminal gang activity." (§ 186.22, subd. (f).) A "'pattern of criminal gang activity' means the commission [or] attempted commission of . . . two or more [enumerated] offenses, [the last of which occurred] within three years after a prior offense, and . . . were committed on separate occasions, or by two or more persons." (§ 186.22, subd. (e).)

The two required enumerated offenses, or "predicate offenses" need not be gang related, and may be proven with official court records establishing the convictions of two or more

predicate offenses by members of the gang. (*People v. Gardeley* (1996) 14 Cal.4th 605, 610, 622–624, disapproved on another ground in *Sanchez*, *supra*, 63 Cal.4th at p. 686, fn. 13.) "[I]nstances of current criminal conduct can satisfy the statutory requirement for a 'pattern of criminal gang activity.'" (*People v. Loeun* (1997) 17 Cal.4th 1, 10–11.) In addition, "evidence of either past or present criminal acts listed in subdivision (e) of section 186.22 is admissible to establish the statutorily required primary activities of the alleged criminal street gang." (*People v. Sengpadychith* (2001) 26 Cal.4th 316, 323.)

B. Analysis

Shorty first challenges the evidence of Turley's predicate crime pursuant to *Sanchez*, *supra*, 63 Cal.4th 665. Shorty contends that because Officer Medina did not personally know Turley, he failed to establish Turley's conviction as a qualifying predicate crime. As set forth above, Shorty is mistaken. Officer Medina did not offer any case-specific hearsay when offering his opinion that Turley was a gang member.

Moreover, "[c]ase-specific facts are those relating to the particular events and participants alleged to have been involved in the case being tried." (*Sanchez*, *supra*, 63 Cal.4th at pp. 675–676.) Under this definition, facts regarding other predicate crimes—and the gang memberships of those who perpetrated them—are not "case-specific" because they do not pertain to the case currently being tried. Instead, predicate crimes are encompassed in the "pattern of criminal gang activity" element of section 186.22, subdivision (e), required to establish that a gang qualifies as a "criminal street gang." Thus, the pattern of criminal gang activity is best characterized as a matter of general background expertise about the gang, on which hearsay is

permitted, rather than "case-specific facts." (*People v. Meraz*, *supra*, 6 Cal.App.5th at pp. 1172, 1174–1175 [expert testimony about a gang's "pattern of criminal activity" was not case-specific because it did not pertain to the "'particular events and participants alleged to have been involved in the case being tried'"].)

Regardless, even if the evidence was insufficient regarding Turley's predicate crime, the prosecution presented evidence of three other qualifying crimes. (§ 186.22, subd. (e).) Thus, Shorty's challenge is rejected.

Shorty next contends that the prosecution presented no evidence of an association between the Brim and Van Ness gangs. We disagree.

In *People v. Prunty* (2015) 62 Cal.4th 59, 70 (*Prunty*), the California Supreme Court addressed "the type of evidence required to support the prosecution's theory that various alleged gang subsets constitute a single 'criminal street gang' under section 186.22[, subdivision (f)]." The Court held that "when the prosecution seeks to prove the street gang enhancement by showing a defendant committed a felony to benefit a given gang, but establishes the commission of the required predicate offense with evidence of crimes committed by members of the gang's alleged subsets, it must prove a connection between the gang and the subsets." (*Id.* at pp. 67–68.) "That connection may take the form of evidence of collaboration or organization, or the sharing of material information among the subsets of a larger group. Alternatively, it may be shown that the subsets are part of the same loosely hierarchical organization, even if the subsets themselves do not communicate or work together. And in other cases, the prosecution may show that various subset members

exhibit behavior showing their self-identification with a larger group, thereby allowing those subsets to be treated as a single organization." (*Id*. at p. 60.)

"Whatever theory the prosecution chooses to demonstrate that a relationship exists, the evidence must show that it is the same 'group' that meets the definition of section 186.22[, subdivision (f)]—i.e., that the group committed the predicate offenses and engaged in criminal primary activities—and that the defendant sought to benefit under section 186.22[, subdivision (b)]. But it is not enough . . . that the group simply shares a common name, common identifying symbols, and a common enemy. Nor is it permissible for the prosecution to introduce evidence of different subsets' conduct to satisfy the primary activities and predicate offense requirements without demonstrating that those subsets are somehow connected to each other or another larger group." (*Prunty*, *supra*, 62 Cal.4th at pp. 71–72.)

Here, Officer Medina specifically identified Smith as a Brim gang member; in fact, Officer Medina had had "numerous encounters" with him. The Brims consisted of three small gangs; because of their limited size, they united under one umbrella, with Van Ness. As further evidence of their association, the prosecution presented a photograph showing gang graffiti of Black Pea Stones, Van Ness, and Brims on the same wall. Officer Medina opined that their graffiti on the same wall indicates an alliance among those gangs.

In sum, Officer Medina's testimony provides sufficient evidence of an association of these gangs.

V. *The prosecutor did not commit prejudicial misconduct*

Shorty argues that the prosecutor committed misconduct during closing argument. Sanders joined in this argument.

A. Applicable law

"A prosecutor's conduct violates the Fourteenth Amendment to the federal Constitution when it infects the trial with such unfairness as to make the conviction a denial of due process." (*People v. Morales* (2001) 25 Cal.4th 34, 44.) In other words, the misconduct must be "of sufficient significance to result in the denial of the defendant's right to a fair trial." (*People v. Cole* (2004) 33 Cal.4th 1158, 1202.) "'Conduct by a prosecutor that does not render a criminal trial fundamentally unfair is prosecutorial misconduct under state law only if it involves the use of deceptive or reprehensible methods to attempt to persuade either the trial court or the jury.' [Citation.]" (*People v. Gonzales and Soliz* (2011) 52 Cal.4th 254, 305.) "[W]hen the claim focuses upon comments made by the prosecutor before the jury, the question is whether there is a reasonable likelihood that the jury construed or applied any of the complained-of remarks in an objectionable fashion. [Citation.]" (*People v. Morales*, *supra*, at p. 44.) However, "[a]t closing argument a party is entitled both to discuss the evidence and to comment on reasonable inferences that may be drawn therefrom. [Citations.]" (*Ibid*.) A prosecutor is given wide latitude during argument. (*People v. Hill* (1998) 17 Cal.4th 800, 819.)

Even where a defendant shows prosecutorial misconduct occurred, reversal is not required unless the defendant can show that he suffered prejudice. (*People v. Arias* (1996) 13 Cal.4th 92, 161.) "Error with respect to prosecutorial misconduct is evaluated under the standards enunciated in *Chapman v.*

California (1967) 386 U.S. 18, 24, . . . to the extent federal constitutional rights were implicated, and under *People v. Watson*[, *supra,*] 46 Cal.2d [at p.] 826, . . . to the extent only state law issues were involved. [Citation.]" (*People v. Adanandus* (2007) 157 Cal.App.4th 496, 514.)

B. Analysis

Shorty's claims of prejudicial prosecutorial misconduct fail. He first objects to "thematic" comments made by the prosecutor during her closing argument. She made statements such as "the defense is asking you to speculate and assume, that's not evidence. That's designed to confuse you." She also said, "If the defense is asking you to consider things we don't know and wonder if facts could have been proved, they're asking you to imagine things, facts and circumstances that are not in evidence." According to Shorty, these statements constitute misconduct because the prosecutor was implying that the defense had "'designed' a sham defense," thereby impugning the integrity of defense counsel. Not so. The comments here did not disparage defense counsel; rather, they were part of the prosecutor's argument regarding the state of the evidence. "An argument which does no more than point out that the defense is attempting to confuse the issues and urges the jury to focus on what the prosecution believes is the relevant evidence is not improper." (*People v. Cummings* (1993) 4 Cal.4th 1233, 1302, fn. 47.)

Second, Shorty contends that the prosecutor committed misconduct by appealing to the jury's passions when she stated: "You know, I would love for Mr. Reliford to be able to come up here and tell you, I didn't call out gang stuff. I'm not the one that should be dirtied up," and by stating that Reliford, Hardy,

Howard, and Williams were the real victims in the shooting and deserved justice when she was discussing Wimley's testimony.[5]

The comments that the prosecutor made about Wimley's testimony and her credibility were well within the wide latitude given to prosecutors to discuss and draw inferences from the evidence. (*People v. Dennis* (1998) 17 Cal.4th 468, 522.) The prosecutor argued that Wimley was untruthful in numerous aspects of her testimony and was trying to blame Reliford and the other victims. Her comments do not seem to have been designed to inflame the jury—she was just stating the obvious, namely that Reliford was no longer here to defend against Wimley's testimony.

Finally, Shorty alleges that the prosecutor improperly vouched for the credibility of the witnesses when she said that the prosecution's witnesses "took responsibility for their behavior." He is mistaken.

A prosecutor may not express a personal opinion or belief in the guilt of the accused when there is substantial danger that the jury will view the comment as based on information other than evidence adduced at trial. (*People v. Lopez* (2008) 42 Cal.4th 960, 971; *People v. Frye* (1998) 18 Cal.4th 894, 971, disapproved in part on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) Thus, a prosecutor's comments must be evaluated in the context in which they are made to determine whether there is a substantial risk that the jury would have considered the remarks to be based on outside sources. (*People v. Lopez*, *supra*, at p. 971.)

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[5] Shorty's counsel objected to these comments and the trial court admonished the jury that the prosecutor's argument was not evidence.

The prosecutor's comment here did not pose any risk because it was based on the evidence presented. She indicated that Shorty and Sanders were the aggressors and that there was no evidence that they had taken responsibility for their actions. Contrariwise, the prosecution's witnesses had been honest by admitting to drinking, smoking, and their role in the fight. Under these circumstances, we see no evidence of the prosecutor improperly vouching for these witnesses.

Even if the prosecutor had committed misconduct, which she did not, we would find that defendants were not prejudiced by her remarks. The trial court properly admonished the jury after each objection by defense counsel. We presume jurors follow a trial court's admonitions and instructions. (*Romano v. Oklahoma* (1994) 512 U.S. 1, 13.)

VI. *The trial court did not abuse its discretion by refusing to hold a Marsden hearing*

Sanders argues that the trial court committed reversible error when it failed to hold a *Marsden* hearing when he raised issues of inadequate representation.

A. Relevant proceedings

On March 17, 2016, Shorty's counsel informed the trial court that he wanted to bring a new trial motion alleging that trial counsel's representation had been inadequate and that he was requesting new counsel be appointed to assist him with the motion. The trial court stated that there would have to be a time waiver, and indicated that because ineffective assistance of counsel is not a ground for a motion for a new trial, they would take up whether to appoint a new attorney at a later date.

The trial court then inquired as to Sanders's status. At that time, Sanders's counsel indicated that he also wanted to

make a motion for a new trial. The trial court asked counsel whether she intended to file the motion for Sanders. Trial counsel indicated that she did not see any grounds for a motion for a new trial, but her client was requesting it. The trial court then stated: "He has a constitutional right to that request. The court's going to honor that request. [¶] So I'm just asking, normally speaking with most of these motions for new trial, either the litigant does it in pro per, or else the attorney does it for them. Rarely do we appoint counsel for motion for new trial." Counsel replied that she would not file a motion because there was no basis for one. After a discussion off the record, both defendants indicated that they wanted to file the motion for new trial in pro. per.

The trial court continued the matter for the motion for a new trial. It then stated to defendants: "[E]ach of you basically will be filing [the] motion on your own. You can basically get an investigator to assist you in this endeavor. Basically you will have your pro per status there in the jails. And it will be your responsibility to put together a motion for new trial. [¶] And I caution you like I do all the other people that have done this. There are certain grounds for motion for new trial pursuant to Penal Code section 1181. You need to familiarize yourself with that, since you [are] your own lawyers, be in a position to address what particular element or what particular grounds pursuant to [section] 1181 you think merit a motion for new trial, okay." Both defendants answered in the affirmative. Sanders then signed a *Faretta* waiver.[6]

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[6] Pursuant to *Faretta v. California* (1975) 422 U.S. 806, a defendant may knowingly and intelligently waive the right to counsel and elect to represent himself.

On October 27, 2016, Sanders informed the trial court that Fred Darden would be representing him. However, Sanders continued to represent himself and filed a motion for a new trial and a supplemental motion for a new trial. After a hearing, which included argument from Sanders and Shorty's hired counsel (Christopher Darden), the trial court denied the motion for a new trial.

B. No further *Marsden* inquiry was required

Sanders contends that the trial court should have conducted a *Marsden* inquiry because Sanders expressed dissatisfaction with his appointed lawyer. We find no error.

A trial court's duty to conduct a *Marsden* inquiry "arises '*only when the defendant asserts directly or by implication* that his counsel's performance has been so inadequate as to deny him his constitutional right to effective counsel.'" (*People v. Leonard* (2000) 78 Cal.App.4th 776, 787.) The *Marsden* inquiry is forward-looking in the sense that counsel would be substituted in order to provide effective assistance in the future. But the decision must always be based on what has happened in the past. (*People v. Smith* (1993) 6 Cal.4th 684, 695.) Substitution of court-appointed counsel under *Marsden* is a matter of judicial discretion, and a trial court retains discretion to deny a *Marsden* motion as untimely. (*People v. Lara* (2001) 86 Cal.App.4th 139, 151.)

Under the circumstances presented here, the trial court was not required to conduct any further *Marsden* inquiry. Sanders indicated that he wanted to file a motion for a new trial alleging ineffective assistance of counsel. But he never established that his counsel's performance had "'been so

inadequate as to deny him his constitutional right to effective counsel.'" (*People v. Leonard*, *supra*, 78 Cal.App.4th at p. 787.)

In his motion for a new trial that was presented while defendant was in pro. per., and which occurred outside the presence of defense counsel, Sanders argued that his defense counsel was ineffective only for failing to impeach Reed and failing to investigate a cell phone that was found near the crime scene. His claim of ineffective assistance of counsel did not demonstrate an actual conflict that required defense counsel's removal. (*People v. Leonard*, *supra*, 78 Cal.App.4th at p. 787.)

VII. *The trial court properly granted Sanders's request for self-representation*

Sanders contends that his waiver of his right to counsel was not knowing, intelligent, and voluntary.

A. Legal principles

"A defendant in a criminal case possesses two constitutional rights with respect to representation that are mutually exclusive." (*People v. Marshall* (1997) 15 Cal.4th 1, 20.) "[T]he Sixth Amendment guarantees a defendant a right to counsel but also allows him to waive this right and to represent himself *without* counsel." (*United States v. Erskine* (9th Cir. 2004) 355 F.3d 1161, 1167.) Thus, in any case in which a *Faretta* request for self-representation has been made, the court must evaluate, sometimes under problematic circumstances, two countervailing considerations: on the one hand, the defendant's absolute right to counsel, which must be assiduously protected; on the other hand, the defendant's unqualified constitutional right to discharge counsel if he pleases and represent himself. (*People v. Sullivan* (2007) 151 Cal.App.4th 524, 525.)

"'When confronted with a request' for self-representation, 'a trial court must make the defendant "aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'" [Citations.]" (*People v. Stanley* (2006) 39 Cal.4th 913, 932.) "In order to deem a defendant's *Faretta* waiver knowing and intelligent," the trial court "must insure that he understands 1) the nature of the charges against him, 2) the possible penalties, and 3) the 'dangers and disadvantages of self-representation.' [Citation.]" (*United States v. Erskine*, *supra*, 355 F.3d at p. 1167.) The admonitions must also "include the defendant's inability to rely upon the trial court to give personal instruction on courtroom procedure or to provide the assistance that otherwise would have been rendered by counsel. Thus, a defendant who chooses to represent himself or herself after knowingly, intelligently, and voluntarily forgoing the assistance of counsel assumes the risk of his or her own ignorance, and cannot compel the trial court to make up for counsel's absence." (*People v. Barnum* (2003) 29 Cal.4th 1210, 1214–1215.) The defendant "should at least be advised that: self-representation is almost always unwise and that the defense he conducts might be to his detriment; he will have to follow the same rules that govern attorneys; the prosecution will be represented by experienced, professional counsel who will have a significant advantage over him in terms of skill, training, education, experience, and ability; the court may terminate his right to represent himself if he engages in disruptive conduct; and he will lose the right to appeal his case on the grounds of ineffective assistance of counsel. [Citation.] In addition, he should also be told he will receive no help or special treatment from the court

and that he does not have a right to standby, advisory, or cocounsel. [Citation.] [¶] While this list of issues is not exhaustive, it demonstrates that there are a number of matters the court must ask about and consider before ruling on a defendant's request to represent himself." (*People v. Phillips* (2006) 135 Cal.App.4th 422, 428.)

"No particular form of words, however, is required in admonishing a defendant who seeks to forgo the right to counsel and engage in self-representation. "'The test of a valid waiver of counsel is not whether specific warnings or advisements were given but whether the record as a whole demonstrates that the defendant understood the disadvantages of self-representation, including the risks and complexities of the particular case.'" [Citations.]" (*People v. Lawley* (2002) 27 Cal.4th 102, 140.) If the trial court's warnings communicate powerfully to the defendant the "'disadvantages of proceeding pro se,'" that is all "'*Faretta* requires.'" (*People v. Sullivan*, *supra*, 151 Cal.App.4th at p. 546.)

B. Analysis

Applying these legal principles, we conclude that Sanders was properly advised before he knowingly, intelligently, and voluntarily waived his right to counsel. When Sanders said that he wanted to represent himself, the trial court cautioned him. He was warned that the task would not be easy and that he would "need to familiarize" himself with the Penal Code and what grounds might warrant relief.

Immediately thereafter, Sanders filled out the four-page form titled "ADVISEMENT AND WAIVER OF RIGHT TO COUNSEL (*Faretta* Waiver)" in clear, uniform penmanship. That form explained to Sanders that he had constitutional rights, including the right to counsel, to a speedy jury trial, to subpoena

witnesses and records, to confront and cross-examine witnesses, against self-incrimination, to release on bail, and to waive counsel and represent himself. Throughout the form, Sanders initialed each of those advisements, including his understanding of each right. Sanders also stated that he was 35 years old.

Sanders also initialed, indicating his understanding of, a series of advisories under the heading "DANGERS AND DISADVANTAGES TO SELF-REPRESENTATION." He indicated that he understood that "there are many dangers and disadvantages in representing [himself]," including his obligation to follow all technical rules of substantive law, criminal law, and evidence "WITHOUT THE ASSITANCE OF A LAWYER OR THE COURT," the fact that the prosecutor would be "an experienced trial attorney" and Sanders would "not be entitled to special consideration or assistance by the" trial court, and Sanders would have to conduct his own trial 'WITHOUT THE ASSISTANCE OF A LAWYER."

Sanders indicated that he understood that he could not and would not "receive any help or special treatment from the [trial] court," that he would have to justify any requests for additional funds by showing receipts for funds already expended, his custody status would make trial preparation and investigation more difficult, no continuance would be allowed without a showing of good cause and "that such requests made just before trial [would] mostly likely be denied," that he might have to proceed without counsel if he changed his mind, that his courtroom movement might be limited due to his custody status, that he could not abuse the trial court's dignity, and that if an attorney took over representation midtrial, he might be at a disadvantage.

Sanders indicated that he understood all of the risks and disadvantages, and still wanted to proceed in pro. per. He then certified that he had read and understood all of the trial court's warnings and was voluntarily giving up his right to have an attorney represent him.

All of the foregoing establishes that Sanders was properly advised regarding his election to represent himself, that he understood what he was doing, and that the trial court properly permitted him to represent himself.

Sanders's suggestion that the trial court must engage in an oral colloquy in addition to any waiver form is meritless. (*People v. Blair* (2005) 36 Cal.4th 686, 709 [the failure to "query the defendant orally about his responses" on the *Faretta* form "does not necessarily invalidate defendant's waiver, particularly when, as here, we have no indication that defendant failed to understand what he was reading and signing"], overruled on other grounds in *People v. Black* (2014) 58 Cal.4th 912, 919–920.)

VIII. *The matter is remanded so that the trial court may properly orally pronounce Sanders's sentence as to count 7*

In count 7, Sanders was charged with possession of a firearm by a felon (§ 29800, subd. (a)(1)). It was further alleged that he had suffered two prior serious felonies (§ 667, subd. (a)(1)) and two prior serious or violent felonies (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). The jury found Sanders guilty in count 7, and in a bifurcated proceeding, the trial court found the prior conviction allegations to be true. During sentencing, the trial court pronounced as to count 7: "A violation of Penal Code section 29800, which is the felon in possession of a firearm and with a gang allegation have been found true. The high term doubled, plus additional four years with a gang allegation for a

total of ten years." Sanders contends that the trial court erred when it sentenced him to a gang enhancement in count 7, and that it should strike the four-year gang enhancement. The People agree that the matter should be remanded so that the trial court can properly orally pronounce the sentence as to count 7.

It may be that the trial court misspoke when it included a gang enhancement. While there was no gang enhancement pleaded or found true by the jury, the trial court did find true Sanders's prior serious felony pursuant to section 667, subdivision (a). Consequently, Sanders was exposed to an additional five-year sentence pursuant to section 667, subdivision (a). Because of the apparent discrepancy, the matter is remanded to the trial court so that the sentencing court can orally impose an authorized sentence.

IX. *Sanders is entitled to additional custody credit*

Sanders received 738 days of actual presentence custody credit. However, the record shows that he spent a total of 740 days in custody. Thus, he is entitled to an additional two days of custody credit.

X. *Sanders's abstract of judgment and the clerk's minute order must be amended*

Sanders contends that two of his minute orders and his abstract of judgment must be amended because they contain clerical errors. The People agree.

The March 17, 2016, minute order provides: "Defendant's motion for [a] new trial . . . is granted." However, that is the date Sanders notified the trial court that he wanted to file a motion for a new trial. The actual motion was heard and denied on January 13, 2017. Therefore, the March 17, 2016, minute order

must be amended to reflect that Sanders requested a motion for a new trial. And, because the January 13, 2017, minute order does not reflect that Sanders's motion for a new trial was heard and denied that day, it must be amended to reflect as such.

In addition, the abstract of judgment indicates that the attempted murder in count 2 was committed in 2012 and that all other offenses were committed in 2014. In fact, all the charges arose from the same incident on December 27, 2014. Thus, the abstract of judgment should be modified to reflect that count 2 was committed in 2014. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185–186.)

The abstract of judgment and minute orders indicate that the trial court imposed and stayed gang enhancements pursuant to section 186.22, subdivision (b)(1)(C). However, the trial court sentenced Sanders within the meaning of section 186.22, subdivision (b)(5), which called for a minimum 15-year parole eligibility period. Thus, the abstract of judgment and minute orders should be corrected to reflect the true oral pronouncement of Sanders's sentence.

Finally, the abstract of judgment does not reflect the length of the sentences that the trial court imposed and stayed in counts 5 and 7. In count 5, Sanders was sentenced to 15 years to life, doubled to 30 years to life. In count 7, he was sentenced to the high term of three years, doubled to six years plus four years for a total of 10 years. The abstract of judgment must be amended to conform to the trial court's oral pronouncement of judgment in counts 5 and 7.

DISPOSITION

The judgment against Shorty is affirmed.

As to Sanders, the matter is remanded to the trial court so that it can orally impose an authorized sentence as to count 7. The matter is also remanded to grant Sanders 740 days of custody credit. And, the matter is remanded so that the trial court can amend Sanders's abstract of judgment and the March 17, 2016, and January 13, 2017, minute orders. As modified, the judgment against Sanders is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT