

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMUEL VICTOR PINTO,

Defendant and Appellant.

B238368

(Los Angeles County
Super. Ct. No. TA117527)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Kelvin D. Filer, Judge. Affirmed.

California Appellate Project and Jill Ishida, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Samuel Victor Pinto appeals from the judgment entered following his pleas of no contest to willful, deliberate and premeditated second degree murder (Pen. Code, § 187, subd. (a))¹ and two counts of attempted willful, deliberate and premeditated murder (§§ 664/187, subd. (a)). The trial court sentenced him to 20 years to life in prison. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

*1. Facts.*²

At approximately 11:30 p.m. on August 9, 2010, Roberto Vazquez was at 3553 Beachwood Avenue in Lynwood. Vazquez, accompanied by “Ruben Galvan and Arturo [Companzo],” was leaving a “hamburger restaurant” known as “Bobo’s.” Bobo’s is located on the corner of California and Imperial. Sixteen-year-old Galvan, who had been a friend of Vazquez’s for 10 years, had bought some French fries and was carrying them in a paper bag. Galvan was also carrying a stick he had picked up along the way.

As they were walking, Vazquez had to stop to tie his shoe. Galvan and Companzo kept walking and stepped in front of Vazquez. Another young man, who Vazquez believed was called “Abel,” approached Vazquez from behind, “banged on [him],” then called out his “crew’s” name, “Swindle.” Vazquez turned around and said, “ ‘What the fuck?’ ” At that moment, Vazquez heard gunshots being fired from the direction of Bobo’s. The shots were coming from the middle of the street, toward the sidewalk on which Vazquez, Galvan and Companzo were walking. Vazquez started to run and when he glanced back, he saw Pinto, clutching a gun in his hands, firing shots. Pinto was between 12 and 15 feet from Vazquez when he fired the weapon, which appeared to have a red light on it. Vazquez heard the bullets strike things around him.

After Pinto had fired approximately five or six shots and Vazquez had started running down Beachwood, he passed Galvan. Although Companzo had run ahead, when Vazquez looked, he realized that Galvan had been shot. Galvan was “stumbling to the

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

² The facts have been taken from the transcript of the preliminary hearing.

middle of the street and he was falling.” There was blood on Galvan’s chest and he eventually collapsed onto the ground.

Vazquez stayed with Galvan for a short time then, “in fear for [his] life,” ran behind “a van and some apartments and a gate.” As he ran, the baseball cap that he had been wearing came off and landed on the sidewalk. The cap was black and had the letter “B” on the front of it.

When he was shown a photograph of the sidewalk on which he and Galvan had been walking, Vazquez stated that there appeared to be blood there. Vazquez had seen blood “coming out of [Galvan’s] body.” In addition to the photograph of the blood, Vazquez was shown photographs of the stick and paper bag Galvan had been carrying. Both objects had blood on them. Vazquez also indicated that Galvan had been wearing a hat that night, a blue baseball cap with an “S” on it. Vazquez identified photographs of Galvan’s maroon colored Khaki shorts, his black shirt, his cell phone and his shoes. Vazquez identified photographs of Galvan, indicating that that was how Galvan looked before he was shot, and a photograph of Pinto, showing how he looked on the night of the shooting. Vazquez indicated that Pinto looked “shorter [and chubbier] back then.”

Police officers arrived and Vazquez was given admonitions regarding the identification of suspects in the field. After he indicated that he understood the admonitions, Vazquez identified Pinto as the shooter.³ Vazquez indicated that, at the time, he thought that Pinto was “around twelve or thirteen years old.” When he identified Pinto, Vazquez was in a patrol car and Pinto was standing in the street, next to the well-lit wall of a McDonald’s restaurant. As he was being driven to the site where he identified Pinto and a man named Lomeli, who had been with Pinto that evening, a police officer told Vazquez that “they had two suspects that had matched the identification[s] [Vazquez had] made.”

³ Vazquez also identified an individual known as Octavio Lomeli as a man who had been with Pinto that night. Lomeli, however, had not been carrying a gun.

Deputy Sheriff Carolina Roman was assigned to the Century Sheriff Station Patrol on August 9, 2010. At approximately 11:30 that night, she was ordered to report to Beachwood Avenue by Long Beach Boulevard. There, she observed Pinto being detained by another deputy. Roman spoke with Vazquez, who had identified Pinto as “ ‘the shooter.’ ” Vazquez stated that Lomeli, who was the first of the two men to get out of a patrol car, had been with Pinto. Vazquez, however, never said that Lomeli had a gun or was a shooter. It was when Pinto got out of the car that Vazquez stated that he “was the one [who had] pointed the gun at him.”

Los Angeles County Deputy Sheriff Brian Tolmasoff reported to Beachwood Avenue at approximately 11:30 p.m. on August 9, 2010. When he first arrived, Tolmasoff observed a “[m]ale Hispanic, [juvenile], lying in the street.” He was toward the south curb, in front of a car. The young man was bleeding from his upper torso.

Tolmasoff spoke to Vazquez, who gave the deputy a description of possible suspects involved in the shooting. After broadcasting the description of the suspects over the radio, Tolmasoff “waited for assisting units to” arrive, then went to St. Francis Hospital to check the status of the victim. When he arrived at the hospital, Tolmasoff was informed that the victim, Ruben Juan Galvan, had “died of a gunshot wound” at approximately eight minutes after midnight. The bullet had apparently entered the right side of his body and exited the left. When another deputy later spoke to the coroner regarding Galvan’s autopsy, the coroner indicated that “he found the death [to have been] caused by a single gunshot wound to the upper chest.”

After leaving the hospital, the deputy went to 606 North Poinsettia Avenue in Compton. There, he contacted Arturo Companzo and transported him back to Beachwood Avenue where “a couple [of] suspects were [being] detained to [participate in] a field identification.” When Tolmasoff first arrived at the scene at Beachwood, Pinto was sitting in the back of a patrol car.

Tolmasoff gave to Companzo the field showup admonishment and Companzo stated that he understood it. Companzo then indicated that Pinto had been the one who had shot the gun.

Tolmasoff then spoke with Vazquez. Vazquez told the deputy that he had seen three male Hispanic juveniles, each of whom had been dressed in dark clothing. Of the three, Pinto was the one with the gun.

Tolmasoff indicated that, along with Pinto, Lomeli participated in the field showup. Companzo identified Lomeli as a “possible suspect” and stated that, when Lomeli had been with the other suspects, he had said “ ‘Where you from?’ ” Lomeli, however, had not been the shooter.

Wayne Holston is a detective for the Los Angeles County Sheriff’s Department assigned to the Homicide Bureau. Holston was the detective who investigated the shooting of Galvan on the night of August 9, 2010. Holston spoke with Companzo, who indicated that, when they heard the gun shots, he, Vazquez and Galvan all started to run eastbound on the north sidewalk of Beachwood. However, when Companzo looked back, he saw Galvan fall down into the street. Companzo kept running down Beachwood and ultimately hid in an apartment complex.

When police officers, the fire department and an ambulance arrived, Companzo told the officers that he was a friend of Galvan’s. Holston did not know whether he told them that he had been there at the time of the shooting. Companzo then left the scene and went to his sister’s home in Compton. When he was later transported back to the site of the shooting by a sheriff’s deputy, Companzo identified Pinto, who was depicted in “People’s [photograph] 15,” as that of the shooter.

Holston spoke with Companzo again at approximately 7:30 a.m. on August 10, 2010. Companzo told Holston that, on the evening of August 9, he had gone to Bobo’s Restaurant with two of his friends, Galvan and Vazquez. They had been walking back from the restaurant when the shooting occurred “and he [had] ran and hid.” Before the shooting began, Companzo heard the man who had not done the shooting, Octavio Lomeli, ask him, Galvan and Vazquez, “ ‘Do you write?’ ” Companzo then described the shooter as “short, young, twelve, thirteen years of age, and heavy.” The gun was a black “handgun” and Companzo remembered hearing six or seven shots fired.

Holston spoke with Pinto on the morning of August 10, 2010.⁴ After waiving his constitutional rights and agreeing to speak with the detective without an attorney or his parents present, Pinto indicated that he and Lomeli had been smoking marijuana and tagging on walls. At some point they met up with a third man, Abel, and the three of them started to walk down Beachwood toward their homes. As they were walking, Pinto heard gunshots coming from behind him. He ran, but was then detained by sheriffs.

Pinto told Holston that, when he had said that his name was Brian Hernandez, he had been lying. “[H]e was on probation and on the run. . . . [H]is [probation officer] had issued a bench warrant for his arrest[.]”

When Holston told Pinto that he thought that Pinto was also lying about the shooting, Pinto began to cry.⁵ Pinto stated, “ ‘You know [the] truth.’ ” When Holston then asked Pinto if he shot Galvan, Pinto, who “appear[ed] remorseful,” answered, “Yes.” He stated that “he didn’t mean to hurt anybody. He said that he was only trying to scare them.” He shot the gun, which he had purchased the day before. After shooting the gun he couldn’t believe what he had done. “[H]e . . . stayed there momentarily in disbelief.” He then “just dropped [the gun] into a yard and ran.”

Pinto indicated that he and his friends were out on the street because his friend’s brother’s puppy had been stolen and they were looking for it. They believed it might be in that area. Pinto had purchased the gun from a man at the train depot for \$35. Once he had started, he continued to shoot the gun until it ran out of bullets. He did not know that he had hit someone, although he did see Galvan fall. Pinto saw the rest of the group “run as he was shooting.”

⁴ Detective Shonka was also at the interview, which was tape recorded.

⁵ Pinto cried on and off throughout the interview. At one point, when he was talking about his mother, he was crying “uncontrollably.” He indicated that “his mother was very sick and that he was worried that he wouldn’t see her because he was going to be locked up for a long time.”

Holston had gone to the scene of the shooting on the evening of August 9, 2010. All of the street lamps were “functional and working” and there was a residence under construction in the area which was lit with additional flood lights. He found seven .380 caliber shell casings there. Holston observed “bullet strikes” in a fence in front of 3553 Beachwood, in a tree next to the fence, in a “1998 Navigator which was parked” nearby and in the stucco of the house. The bullet strikes were located approximately 20 feet from where the casings were found. Holston also found blood stains in front of the house next door, just east of the bullet strikes.

2. Procedural history.

In an amended information filed on October 27, 2011, Samuel Victor Pinto was charged in count 1 with the willful, deliberate and premeditated murder of Ruben Galvan, with malice aforethought, in violation of section 187, subdivision (a). It was further alleged that the murder was committed willfully, deliberately and with premeditation within the meaning of section 664, subdivision (a) and was a serious felony pursuant to section 1192.7, subdivision (c). It was also alleged that defendant Pinto personally and intentionally discharged a firearm, a handgun, which caused great bodily injury and death to Galvan within the meaning of section 12022.53, subdivisions (d), (c) and (b), causing the above offense to become a serious felony pursuant to section 1192.7, subdivision (c)(8) and a violent felony within the meaning of section 667.5, subdivision (c)(8).

In count 2, Pinto was charged with the attempted, willful, deliberate, and premeditated murder of Roberto Vazquez, committed with malice aforethought, in violation of sections 664 and 187, subdivision (a). It was further alleged that the attempted murder was committed willfully, deliberately and with premeditation within the meaning of section 664, subdivision (a) and was a serious felony pursuant to section 1192.7, subdivision (c).

It was alleged as to counts 1 and 2 that Pinto personally and intentionally discharged a firearm, a handgun, within the meaning of section 12022.53, subdivision (c), causing the above offenses to become serious felonies pursuant to section 1192.7, subdivision (c)(8) and violent felonies within the meaning of section 667.5,

subdivision (c)(8). It was also alleged that Pinto personally used a firearm, a handgun, within the meaning of section 12022.53, subdivision (b), causing the above offenses to become serious felonies pursuant to section 1192.7, subdivision (c)(8) and violent felonies within the meaning of section 667.5, subdivision (c)(8).

Count 3 alleged that Pinto committed, with malice aforethought, the crime of attempted, willful, deliberate and premeditated murder of Arturo Companzo in violation of sections 664 and 187, subdivision (a). It was further alleged that the attempted murder was committed willfully, deliberately and with premeditation within the meaning of section 664, subdivision (a) and was a serious felony pursuant to section 1192.7, subdivision (c).

As to counts 1, 2 and 3, it was alleged pursuant to Welfare and Institutions Code section 707, subdivision (d)(2)(A) and (B), that Pinto was a minor who was at least 14 years of age at the time of the commission of the above offenses.

Finally, it was alleged as to counts 1, 2 and 3 that the offenses were serious, violent felonies or offenses requiring registration pursuant to section 290, subdivision (c) and that prison custody time for the offenses was to be served in state prison pursuant to section 1170, subdivision (h)(3).

Pinto pleaded not guilty to all of the charges and denied the special allegations and enhancements. He indicated he wished to have the matter tried by a jury.

Before jury selection, the People indicated they wished to have an Evidence Code section 402 hearing regarding the admission of evidence indicating that Pinto belonged to a “tagging crew,” that he had been tagging items before the shooting and that one of Pinto’s cohorts had asked the victims, “ ‘Do you [write]?’ ” immediately before the shooting. Although a tagging crew is not a gang, the question “Do you write?” is similar to a gang member asking another gang member where he or she is from. It is a challenge to the victim and can show motive or intent for the shooting. Here, Pinto apparently had showed Lomeli the gun just a few minutes before Lomeli asked Vazquez if he wrote.

Pinto’s counsel asserted that there was no evidence that his client heard Lomeli ask Vazquez if he “wrote,” and, even if he had, it could not be said that it went to motive

or intent. Counsel indicated, “I think it’s simply an attempt to bring in gang evidence or something very similar[.]”

The trial court agreed that, before such evidence could be admitted, a hearing would need to be held on whether being a member of a tagging crew is the equivalent of being a member of a gang when one is considering the motive or intent for a shooting. The trial court indicated that counsel could voir dire on the question, but instructed that a tagging crew was not to be characterized as a gang and that both counsel were to “make it very clear [that this was] not a gang case.”

After voir dire had begun, Pinto decided to change his plea. The prosecutor indicated that it was going to be “a plea to count 1, second degree murder with 15 to life consecutive to count 2 which is the low term of five years for a total of 20 years to life.”⁶

The prosecutor advised Pinto of his right to a jury or court trial, his right to confront and cross-examine the witnesses against him, his right to testify, his right to use the subpoena power of the court free of charge, his right to present a defense and his right to remain silent. Pinto indicated that he understood and waived those rights and was entering the plea “freely and voluntarily and because that [was] what [he] want[ed] to do.” Pinto then pled no contest to “the charge in count 1, the crime of willful, deliberate and premeditated [second degree] murder in violation of . . . section 187[,] [subdivision] (a) upon the person of Ruben Galvan.” With regard to count 2, Pinto pled no contest to “the crime of attempted, willful, deliberate and premeditated murder in violation of . . . section[s] 664/187[,] [subdivision] (a), upon the person of Roberto Va[z]quez[.]”

The trial court found that the waivers had been “knowingly, intelligently, freely and voluntarily made, and [that there was] a factual basis for the plea. Therefore the court [accepted] the defendant’s plea of no contest to both counts 1 and 2.” The court indicated that “[t]he remaining counts and allegations [were to be] continued over for dismissal at the probation and sentencing hearing.”

⁶ The maximum term which could have been imposed for the charges as alleged in the information was 88 years to life.

Sentencing proceedings were held on January 6, 2012. Defense counsel argued that, although Pinto “needs to pay for the crime that was committed[,] . . . at the same time we don’t normally try our children as adults as was done in this case. I’d like to remind the court that as it looks through the documentation that was provided while he’s been in custody, [it indicates that] although [there have] been numerous incidents, one thing that is interesting, in each of the reports . . . there’s always [been a] referral to mental health. We don’t know what the results of that is. [¶] But . . . this young man has some serious problems. At one time they would call it TMR or [mental retardation], but now they go with ADHD. It appears he has a problem in controlling behavior [¶] . . . I would ask the court under 1385 to exercise its own discretion [to dismiss the charges].” Counsel requested that the court “look at the totality of the circumstances, [including Pinto’s] age[,]” that “he was living on the streets” and that “he did get into some trouble but he had no guidance at home. . . . He was without a father figure. And obviously he had friends that were the main influence in his life. And without proper guidance that is certainly a recipe for getting into trouble.” Counsel indicated that, under section 1385, “there are a host of cases that say[] the court has the discretion . . . to strike various things [and] to change sentences, even sentences that [were] agreed upon.” “[Pinto] can receive the attention he needs in the Youth Authority. Society [can] be protected for that number of years. And should he not be able to conform, I think that he would still be subject to reincarceration” Defense counsel asked the trial court to “exercise its own discretion to adjust or set aside the conviction of second degree.” Counsel argued: “Certainly a manslaughter would be within the court’s discretion to impose. . . . It would be a substantial amount of time that he would serve and justice would be served for everybody.”

The prosecutor argued that this was “a brutal [killing], it was an assassination.” In addition, “[t]he defendant was extremely deceptive in the fact that he gave an alias of [Brian] Hernandez. Most of the police documents come out [Brian] Hernandez. [¶] . . . He . . . made an intelligent an[d] voluntar[y] decision to plea[] on this case And . . . the court had a chance to hear all the victim impact statements that were read at the time.”

The trial court denied defense counsel's motion. The court stated: "There's absolutely no basis which would warrant the court exercising its discretion under that code section. This was an agreed upon disposition" and "there's absolutely nothing that makes me doubt that Mr. Pinto understood his rights when he agreed to the disposition. There's a stipulation that the facts reflect the agreed upon disposition, so there's no basis for the court to change or modify or strike the agreement that was reached between the two parties."

The trial court sentenced Pinto to the low term of 15 years to life for his conviction of count 1, second degree murder. As to count 2, the attempted murder, the trial court imposed the low term of 5 years, the term to run consecutively to the 15 years imposed for count 1. In total, Pinto was sentenced to 20 years to life in prison. Pinto was ordered to make direct restitution to the Victim Compensation Board in the amount of \$8,584.67 (§ 1202.4, subd. (f)), to pay a \$240 restitution fine (§ 1202.4, subd. (b)), a stayed \$240 parole revocation restitution fine (§ 1202.45), an \$80 court security fee (§ 1465.8) and a \$30 criminal conviction assessment (Gov. Code, § 70373). Pinto was awarded presentence custody credit for 513 days. On the People's motion, the trial court dismissed all remaining charges and allegations.

Pinto filed a timely notice of appeal.

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed May 14, 2012, the clerk of this court advised Pinto to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KLEIN, P.J.

We concur:

CROSKEY, J.

KITCHING, J.