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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

EDWIN ALEXANDER PEREZ,

Defendant and Appellant.

B279776

(Los Angeles County
Super. Ct. No. MA060443)

APPEAL from a judgment of the Superior Court of
Los Angeles County. Frank M. Tavelman, Judge. Affirmed.

Melanie K. Dorian, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Steven D. Matthews and Robert C. Schneider,
Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Edwin Alexander Perez appeals from a second degree murder conviction on the ground there is no substantial evidence demonstrating that he aided and abetted the murder. He also argues the court erred in refusing to instruct the jury on self-defense.

We find substantial evidence supports the conviction and no instructional error. We affirm the conviction.

STATEMENT OF THE CASE

Appellant Edwin Alexander Perez (appellant or Puppet) and Rodney Redondo (Redondo or Kiki) were charged with murder in violation of Penal Code section 187, subdivision (a)¹ in an amended information. The information also alleged that a principal used a firearm causing great bodily injury or death within the meaning of section 12022.53, subdivision (d), that the offense was committed for the benefit of, or at the direction of, and in association with a criminal street gang with the specific intent to promote, further and assist in criminal conduct by gang members pursuant to section 186.22, subdivision (b)(4), and that appellant had served one prior prison term within the meaning of section 667.5, subdivision (b). On November 10, 2016, the information was amended a second time to add second degree murder as count 2.²

The defendants were tried jointly. Codefendant Redondo, who was tried as the principal, was acquitted. Appellant, who

¹ Unless otherwise noted, all further statutory references are to the Penal Code.

² The second amended information is not part of the record, but respondent does not dispute appellant's characterization of its contents.

was tried on an aiding and abetting theory, was acquitted of first degree murder, but convicted of second degree murder. The jury found the gang and gun allegations not true. The People did not proceed on the prior prison term enhancement.

Appellant was sentenced to state prison for 15 years to life, to run consecutively to a 40 years to life sentence imposed in case No. MA060452.

Appellant filed his Notice of Appeal on December 8, 2016.

STATEMENT OF FACTS

The Murder Victim and Location

At 5:00 a.m. on May 23, 2013, Los Angeles County Deputy Sheriff Mario Villalobos responded to an “assault” call at an apartment complex on East Avenue Q-10 in Palmdale. Upon entering the apartment, he observed a dead body lying face down in the hallway. The deceased’s foot was partially inside the bathroom. There was a bandana near the body and a cell phone and folding knife in the open position on the bathroom countertop. It was determined that the deceased died of a single gunshot wound that killed him almost instantly. He was ultimately identified as Jose “Tony” Murillo (Murillo).

Sheriff’s Detective Kevin Acevedo of the Homicide Bureau also responded to the scene. He determined that Anna Sanchez (Anna)³ was the leaseholder of the apartment and occupied one bedroom; Ramon Munoz⁴ (Munoz) occupied the other bedroom.

³ No disrespect is intended by the use of Ms. Sanchez’s first name. We will also refer to a witness named Priscilla Sanchez and first names are used to distinguish between the two.

⁴ Munoz is spelled both with a “s” and a “z” in the record. We adopt the more common spelling with a “z”.

Rebecca Martinez (Martinez) had been staying in the apartment “off and on” since early May 2013, and was there on May 22 and 23, 2013, during the relevant events. A visitor named Michael Phillips also was at the apartment during the evening of May 22, 2013, and on May 23, 2013, when the shooting occurred. He had gone to the apartment to sleep because he had been up for a while after using methamphetamine and needed a place to crash. Munoz gave him some Vicodin and Seroquel, which knocked him out and Phillips slept for at least two days. All of the occupants were methamphetamine users.

Cell Phone Evidence

The prosecution’s principal witness was Martinez. On the morning of May 22, 2013, Martinez was in the bathroom of the apartment smoking methamphetamine, when Murillo knocked on the door. According to Martinez, Murillo asked her for drugs. When she said she did not have any for him, Murillo became upset. He pushed her, called her a bitch and then walked out.

Irritated by the exchange, Martinez sent text messages to various men she knew were gang members to get someone to come “check” or fight Murillo. The first text went out at 4:51 a.m. to someone named Grisly and said, “Come pick me up and drop me off and Tony just called me a bitch.” Seconds later, she sent a second text to him that read “And told me to shut the fuck up.” Grisly simply responded, “What Tony?”

At 4:55 a.m. Martinez next tried Redondo, texting him saying, “Are you awake . . . babe this guy here just called me a bitch and told me to shut the fuck up.” Between 5:00 a.m. and 5:11 a.m., she called him several times but he did not answer. At 9:32 a.m., he finally texted back, asking, “What’s up?” She asked him to send someone over with money for drugs. Redondo

eventually picked her up and the two of them went out, smoked some methamphetamine and had sex. Martinez then returned to the apartment.

At 3:25 p.m. Martinez texted Redondo to complain about Murillo again, saying, “That fool Tony I told you about is from Bryan Street.”⁵ At 4:55 p.m. she sent him a text asking him to, “Answer me, please.” Seven minutes later, at 5:02 p.m., Martinez tells Redondo in yet another text, “Hey, he’s talking shit. I told him what you said, and he’s still being stupid.” At some point that afternoon, while Martinez was on the phone with Redondo, Murillo was present and yelled comments directed at Redondo, asking “where’s he from,” saying “F___ him” and calling him a “care bear.” Martinez knew Redondo was affiliated with the C.P.A. gang and that “care bear” was a derogatory term when addressed to a C.P.A. member. Murillo was “talk[ing] trash” about Redondo and wanted to fight him. Redondo said he wanted to “fight [Murillo] back.”

At 5:03 p.m., just after she had texted Redondo, Martinez received a phone call from appellant. Three minutes later, at 5:06 p.m., appellant texted Redondo saying, “Hey G. The fool is at the apartments talking shit to Rebecca. Sup? Let’s go see what’s up with him G. Pac-Town.” “Pac-Town” was a reference to the city of Pacoima. The parties stipulated that appellant was a member of the Pacoima 13 gang and that Redondo’s gang, C.P.A., and Pacoima 13 were not rivals, although they sometimes feuded over drug sales in their respective territories.

⁵ The reference to “Bryan Street” is a reference to the Bryant Street gang. Redondo was a member of a rival gang called Canoga Park Alabama or C.P.A.

Between 11:00 p.m. and 1:52 a.m., Martinez texted Redondo several times, asking when he was coming over and asking him to bring her \$20. At 4:02 a.m., Martinez texted Redondo saying, "I hope you are home and safe. Give me a call babe when you get this." Redondo called Martinez at 4:16 a.m. At 4:21 a.m., Martinez sent Redondo a text which read, "Are you gonna take me home with you?" A little more than 10 minutes later at 4:32 a.m., Martinez texted Redondo warning him, "Babe there's a cop posted out fron[t]. At 4:36 a.m., she texted him "Babe, if you come, then come the way we did the first time." Then, at 4:37 a.m., she texted him that "He's getting ready to leave." She testified she was referring to Murillo.

Appellant called Redondo at 4:46 a.m. The call pinged from a cell tower close to the murder scene. At 4:51:58 Redondo made a call that also used a cell tower close to the murder scene. Thirty seconds later, at 4:52:28 a.m., Redondo's phone connected to the closest cell tower south of the murder scene when it received a call from appellant. At 4:58 a.m. Redondo's phone made a call utilizing the closest cell tower north of the murder scene. At 5:03 a.m., his phone initiated a call using a cell tower southeast of the site of the murder and ended while using a tower even further southeast, indicating Redondo was travelling away from the scene.

The call to 9-1-1 reporting the shooting was made at 4:55 a.m. on May 23, 2013. There is no evidence in the record as to the exact time of the shooting.

Martinez's Testimony

Martinez testified appellant was at the apartment on the evening of May 22, 2013, and although Murillo was there, they did not have any interaction. At some point appellant left, but he

returned in the early morning hours of May 23, 2013. Martinez and Munoz were in Munoz's bedroom smoking methamphetamine and Murillo was in the bathroom taking a shower when appellant and Redondo entered Munoz's bedroom together. Within seconds, Redondo left the room, saying he would be right back and closing the door behind him. Appellant remained in the bedroom with Martinez and Munoz, standing in front of Martinez. Martinez heard movement and "shuffling" outside the bedroom door, but no yelling or screaming. As she turned towards the bedroom door, appellant firmly grabbed her by the left arm. Appellant pulled her down to the floor at about the same time that she heard a loud "pop" that did not sound like a gunshot. Appellant then ran out of the room and Martinez did not see Redondo or appellant again. Phillips, who had been sleeping on the couch, came into the bedroom, and then he left the apartment as well.

Martinez heard "gurgling" coming from the other side of the door. She opened the door and saw Murillo on the floor. He was unresponsive. She and Munoz then left the apartment and ran to the neighboring apartment of Priscilla Sanchez (Priscilla), who called 9-1-1. In the meantime, Martinez texted Redondo, telling him, "I hope you got back safe." She testified she was being a "smart-ass" with that text because she "knew what he did."

Martinez lied to the police during interviews and told them she did not know who killed Murillo because she was afraid of retaliation if she talked. She did not tell the investigating officers that she, appellant and Redondo were at the apartment or that she thought appellant and Redondo were involved in Murillo's death. It was not until after she was charged with the murder that she told detectives about Redondo and appellant and

agreed to testify as to what had happened in return for pleading guilty to a reduced charge of assault and a prison term of seven years.

Testimony of Michael Phillips

Phillips was sleeping on the couch, when he was awakened by a “pop” that he did not identify as a gunshot. He caught a glimpse of a man dressed in black clothing and wearing sunglasses running out of the apartment. He did not see a gun in the man’s hand. Phillips drifted back to sleep until Munoz woke him up saying “someone shot the guy or whatever.” Phillips then left the apartment because he had a warrant and did not want to get involved or be taken into custody. In a May 30, 2013 interview with the police, Phillips told detectives that the man who ran out of the apartment that night had been there a couple of days earlier and that every one called him Puppet. Phillip identified a photo of appellant as that man. However, at trial, he testified he had never met the man he saw before the night of the murder and did not see that man in the courtroom.

Testimony of Karen Villeda

Karen Villeda (Villeda) lived in the neighborhood and had heard about the murder from appellant. She testified appellant told her he was the one who killed Murillo. When pressed for details, she said that the day before the murder, appellant told her to watch the news the next day. After news of the murder was all over the street, appellant returned to visit Villeda the next day and told her that “this is what happens when somebody fucks with him.” He did not state how he killed Murillo or who was with him at the time.

In the past, Villeda had seen appellant with a “homemade” gun that was “maybe about two feet long” with black tape on the end.

Testimony of Priscilla Sanchez

Priscilla was outside of her nearby apartment around midnight on May 22, 2013, hanging out with her boyfriend, Munoz, Martinez, Phillips and Murillo. Murillo and Martinez were “picking” at each other. In contrast to her trial testimony that Murillo had asked her for dope, Martinez told Priscilla that night that she had offered Murillo sex in exchange for drugs and he had refused her. Murillo also told Priscilla that Martinez had wanted “to get with” him, but he was not interested and he called her a “dirty-ass white bitch.” He admitted pushing her.

At some point, a short, skinny, light complected man with acne joined the group outside. Two other people showed up between midnight and 1:30 a.m., who Priscilla believed were appellant and a man named Peter Hernandez (Hernandez). It was apparent to Priscilla from their “mad-dogging” of Murillo that appellant and Hernandez did not like him.

Priscilla went inside to go to bed at around 3:00 a.m. Sometime later, she was awakened by banging on her front door. From her upstairs window, she saw that it was Martinez and Munoz. She also saw a blue PT Cruiser automobile drive off. She had seen appellant and Hernandez in that car previously but could not identify who was in it as it was leaving. When she answered the door, Munoz told her his friend Tony had been killed. Munoz and Martinez were “hysterical.” Munoz was crying. Both were scared. When Priscilla asked what had happened, Martinez repeatedly said, “I’m sorry. I’m sorry . . . I

just wanted [them] to check him.” Martinez also told Priscilla that Puppet did it.

The Forensic Evidence

The prosecution’s firearm expert examined the bullet from Murillo’s body and opined it was fired from either a .38 or .357-caliber revolver manufactured by Colt.

There was a wallet, toothbrush and toothpaste on a ledge in the apartment. Appellant’s parole card was inside the wallet.

There were two bicycles between the kitchen and living room and the grips on one were swabbed for DNA. Redondo was a major contributor to the DNA found on the grips.

Two bloodstains were recovered from the wall. One matched Murillo’s DNA and the second one had DNA from at least three contributors whose identities could not be ascertained.

The bandana that was found on the floor near the body contained blood that matched Murillo’s and Redondo’s DNA. The knife on the bathroom countertop had no trace of blood on the exterior and no DNA on it at all. The interior of the knife was not examined.

DISCUSSION

A. Substantial evidence supports the finding that appellant aided and abetted the murder.

Appellant argues that the evidence is insufficient to prove that he aided and abetted the shooter in the murder of Murillo and therefore that his conviction must be reversed. We are not persuaded.

In reviewing the sufficiency of the evidence, “the reviewing court must determine from the entire record whether a reasonable trier of fact could have found that the prosecution sustained its burden of proof beyond a reasonable doubt. In

making this determination, the reviewing court must consider the evidence in a light most favorable to the judgment and presume the existence of every fact the trier could reasonably deduce from the evidence in support of the judgment. The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt.” (*People v. Mincey* (1992) 2 Cal.4th 408, 432, fn. omitted.) So long as there is substantial evidence, the appellate court must affirm even if other substantial evidence would have supported a different result. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 874.)

Substantial evidence is not simply “any” evidence. It is evidence that is of “ponderable legal significance. . . . It must be reasonable . . . , credible, and of solid value.” (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633; *People v. Johnson* (1980) 26 Cal.3d 557, 578.) Whether a witness’s testimony is credible is a determination that is almost exclusively reserved to the trier of fact. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Jones* (1990) 51 Cal.3d 294, 314.) “Evidence will be disregarded on appeal for credibility reasons only if ‘inherently improbable’ or ‘implausible’ in the strictest sense: i.e., it must appear that the truth of the testimony was *physically impossible* or the falsity of the testimony must otherwise be apparent without resorting to inferences or deductions.” (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2017) ¶ 8:53, p. 8-26, original italics.)

In this case, appellant was found guilty of second degree murder by aiding and abetting its commission. “[A] person aids and abets the commission of a crime when he or she, acting with (1) knowledge of the unlawful purpose of the perpetrator; and

(2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages or instigates, the commission of the crime.” (*People v. Beeman* (1984) 35 Cal.3d 547, 561.) In a murder case, this means that “the aider and abettor must know and share the murderous intent of the actual perpetrator.” (*People v. McCoy* (2001) 25 Cal.4th 1111, 1118.)

Whether a person has aided and abetted the commission of a crime is usually a question of fact. “[P]resence at the scene of the crime, companionship, and conduct before and after the offense” are among the factors that may be considered in making the determination (*In re Lynette G.* (1976) 54 Cal.App.3d 1087, 1094), although mere presence at the scene is not sufficient in and of itself to make a defendant a participant. (*People v. Durham* (1969) 70 Cal.2d 171, 181.)

Appellant argues there is no substantial evidence that he was aware of the shooter’s murderous intent or of the shooter’s life-endangering conduct in going to the apartment with a gun to confront Murillo. Limiting his focus to conduct in the minutes immediately before the shooting, he argues the prosecution only presented evidence “that the door [to the bedroom] opened; appellant entered; Redondo said he would be back and closed the door.” He notes there is no evidence of conversation or conduct between him and the shooter concerning what the shooter intended to do once he left the room and no conduct by appellant while in the bedroom once the shooter left that supported any inference appellant had prior knowledge of the shooter’s unlawful purpose in leaving. He further argues nothing prior to the shuffling sound coming from the hallway indicated appellant was anticipating a skirmish, that the shooter’s statement that he

would be back would not suggest to appellant that the shooter intended to shoot anyone and that the fact the shooter waited 20 minutes for Murillo to finish showering before shooting him “denotes an absence of planning, which, in turn, suggests appellant was not aware of the shooter’s intentions”

This is a very limited view of the evidence. When the review is expanded to the entire record, there is substantial evidence to support the jury’s determination. Murillo, Redondo and appellant are all gang members and Murillo’s and Redondo’s gangs are rivals. Knowing this, and feeling that Murillo had been disrespectful of her, Martinez was relentless in communicating her grievance against him in texts and calls to Redondo and appellant in an effort to get them to “check” or fight Murillo for the perceived insult. On the afternoon of May 22, while Martinez was on the phone with Redondo, Murillo yelled obscenities and derogatory names for Redondo’s gang loud enough for Redondo to hear and both Murillo and Redondo expressed a desire to fight each other. After talking to Martinez on the phone, appellant texted Redondo that Murillo was “talking shit to Rebecca” and he suggested that they “go see what’s up with him.” Later on the 22nd, appellant told Karen Villeda that she should watch the news the next day and she knew he had a gun from having seen him with it in the past. This evidence strongly suggests that appellant knew of the insult to Martinez, that Martinez had reached out to Redondo who was also insulted by Murillo and was a member of a rival gang, that appellant was willing to confront Murillo with Redondo, that a gun might be involved and that something more newsworthy than a fist fight was going to come of the confrontation.

There was evidence that at approximately 11:30 p.m., appellant called Anna, who was out celebrating her birthday, to see if she was going to return to her apartment. Although appellant argues it should be inferred that he made this call to see whether a woman in whom he was interested, Jessica, would be returning to the apartment with Anna, the jury properly could have inferred that appellant was inquiring to determine when only Murillo and Martinez would be present to reduce the possibility of witnesses.

Shortly thereafter, appellant was seen “mad-dogging” or staring angrily at Murillo, and it had the obviously intended effect. Murrillo was observed to be visibly uncomfortable.

Then, in the early morning hours of May 23, appellant and Redondo appeared together at the door of the bedroom where Martinez and Munoz were smoking methamphetamine. After seeing who was there, Redondo immediately announced he would be back and left the bedroom, closing the door behind him. Appellant remained behind and stood in front of Martinez, close enough to touch her. He grabbed her arm when she turned toward the door upon hearing shuffling in the hallway and he forced her to the floor a split second before a “pop” sound was heard. This evidence reasonably gives rise to an inference that appellant knew what Redondo was planning to do and assisted by keeping the others in the bedroom where they could not see or stop what was about to happen. Appellant then quickly left the room and the apartment, without any apparent fear that he might also be shot, again raising the inference that he knew what had happened, that he was not in any danger himself and that he did not want to be there when law enforcement arrived. The most damning evidence against him, however, was his boast to

Villeda hours after the shooting that he had killed Murillo because “this is what happens when somebody fucks with him.”

All of this evidence taken in context supports an inference that Redondo was getting ready to harm Murillo, that either Redondo or appellant brought a gun to the scene and that appellant knew it and assisted. He was present at the scene at the time of the murder. He helped the shooter by determining when there would be few witnesses present in the apartment and by restraining Martinez from witnessing, interfering with and/or from being injured in the melee he knew was occurring.

Appellant also argues the evidence is insufficient to demonstrate he intended to aid and did aid the shooting. He variously argues the witnesses are not credible or that the inferences from the facts are more favorable to his theory or that someone else, and not Redondo, was the shooter. For instance, he asserts he had no motive to kill Murillo because they were friends. He claims his texts and statements are ambiguous and that he was at the apartment only because he was hoping to see Jessica. He says that nothing he did in the bedroom immediately before the shooting proves complicity. He offers up Munoz as the shooter. He claims his statement to Villeda after the killing that this is what happens to people who are disrespectful to him was “at best” an attempt to take credit for the shooting to elevate his status as a gang member, and did not “speak to appellant’s state of mind or conduct before or during the shooting.” He says Martinez’s statement to Priscilla implicating “Puppet” was just a statement of opinion, which “did not amount to evidence.” He argues “[i]n sum” that the evidence points “to a single reasonable conclusion” that appellant was at the apartment to socialize, and

there is “no credible evidence to reasonably show appellant knowingly participated in the deadly incident.”

These arguments ignore the Court of Appeal’s limited role on review. The evidence must be viewed in the light most favorable to the People and the existence of every fact the trier of fact could reasonably deduce from the evidence is presumed to exist. Credibility determinations are the province of the jury and this Court may not substitute its evaluation of credibility for that of the jury. (*People v. Ochoa*, *supra*, 6 Cal.4th at p. 1206.) The jury weighed all of the evidence and made its determinations concerning credibility, the truth or falsity of the testimony and the reasonable inferences that could be drawn from it. Their determinations are supported by the evidence.

B. *There was no substantial evidence to support a jury instruction on self-defense.*

Appellant contends the trial court erred in refusing to give a jury instruction on self-defense on the theory that if the shooter acted in self-defense there was no murder for appellant to aid and abet. Because there was no evidence to support a claim of self-defense, there was no obligation to give such an instruction.

In *People v. Flannel* (1979) 25 Cal.3d 668, 684, footnote 12, the California Supreme Court disapproved earlier decisions to the extent they require jury instructions “whenever *any* evidence is presented, no matter how weak,” and held instead that instructions are required only to the extent each is supported by substantial evidence and not when the evidence is minimal and insubstantial, however, the court need not instruct on its effect. (*Id.* at p. 684.)

In this case, there was no evidence as to what happened in the hallway when Murillo was shot. There were no eye witnesses

to the shooting. Accordingly, there was no evidence Murillo was the initial aggressor or that he presented any threat or resorted to any force. No one was able to testify as to Murillo's position at the time he was shot, so it would be speculation to assume that he was within reaching distance of the knife on the bathroom counter or that he attempted to reach for it. The pathologist stated he could imagine "about 100 or more scenarios" about Murillo's position that would be consistent with the bullet path. The DNA analysis from the knife excluded Murillo as a major contributor and the fact it was possible that Murillo was a minor contributor was only a possibility that at some point in the past, not necessarily at the time of the shooting, that he touched the knife. There is no evidence substantial enough to require the giving of a self-defense instruction.

DISPOSITION

Defendant's judgment of conviction is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.*
MATZ

We concur:

_____ Acting P.J.
CHAVEZ

_____, J.
HOFFSTADT

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.