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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

TOMAS ARIAS, JR.,

Defendant and Appellant.

B269691

(Los Angeles County  
Super. Ct. No. KA100834)

APPEAL from the judgment of the Superior Court of Los Angeles County. Thomas C. Falls, Judge. Affirmed.

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

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and J. Michael Lehmann, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted defendant and appellant Tomas Arias, Jr., of one count of second degree murder, and two counts of possession of a firearm by a felon. The jury also found defendant personally used a firearm in committing the murder, and that all three offenses were committed for the benefit of, at the direction or in association with a criminal street gang. Defendant contends he was denied a fair trial due to the admission of two allegedly coerced witness statements, and that his Sixth Amendment rights were violated by the admission of hearsay evidence from the prosecution's gang expert.

We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Defendant was charged by information with one count of murder (Pen. Code, § 187, subd. (a); count 1), and two counts of possession of a firearm by a felon (§ 29800, subd. (a)(1); counts 2 and 3). It was further alleged, as to all counts, that the offenses were committed for the benefit of, at the direction of, or in association with a criminal street gang within the meaning of section 186.22. As to count 1, it was also alleged defendant personally and intentionally discharged a firearm causing death. (§ 12022.53, subd. (d).)

The charges arose from an incident on December 9, 2012, in the city of Pomona. That evening, Luis Miguel J. (who went by his middle name, Miguel)<sup>1</sup> attended a party with his older brother Jose J. and several friends. Miguel was just 14 at the time. Jose was 18 and a member of a neighborhood tagging crew known as the Don't Care Klick or DCK. After spending a few

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<sup>1</sup> To protect their privacy, we refer to the witnesses by their first names only.

hours at the party drinking and smoking “blunts” (cigars mixed with marijuana), Miguel and Jose left and started to walk home with some of their friends, including Cesar C., Victoria C., and Damian E.

Shortly after the group of friends walked under the 10 Freeway, two males, one of whom was later identified as defendant, approached them. Defendant, who was closest to Miguel, asked Miguel where he was from, a question commonly understood to mean “are you in a gang?” Miguel said he was from nowhere, meaning he was not in a gang, but that he lived in Pomona. Defendant announced he was “Solo” from “Puente.” Defendant’s companion, wearing a gray hooded sweatshirt, did not say anything.

As defendant continued to confront Miguel, Jose and Damian got “face to face” with the male in the gray sweatshirt. They appeared to be arguing but Miguel did not hear exactly what was said because he was focused on defendant who had a gun in his hand. The argument between Damian and the male in the gray sweatshirt escalated. Defendant stepped back a bit and pointed his gun at Damian. Cesar heard defendant say “Puente.” Jose pushed Damian to the ground, apparently to get him out of the line of fire, and in the process Jose was shot by defendant. Everyone ran off after the gunshot, but Victoria knelt next to Jose lying in the street, and stayed with him until just before the police arrived. Jose died as a result of a gunshot wound to his chest.

The case proceeded to a jury trial in August 2015. Defendant moved to exclude the admission of the pretrial recorded statements of his brother, Ruben Estrada, and his girlfriend, Gloria Muñoz. Defendant argued the statements had

been coerced and were unreliable. The court denied the motion. On defendant's request, it was agreed that in the event the statements would be used as impeachment, the entire videotaped statements would be played for the jury, and not just redacted excerpts.

When called by the prosecution, Mr. Estrada testified that he never knew his brother to be called Solo or have that as a nickname and had no idea why he had a tattoo of Solo on his arm. He denied defendant ever admitted to him that he shot someone outside their mother's home, and denied giving him money to flee to Las Vegas. Mr. Estrada said the police pressured and threatened him into saying things he did not mean, including threatening him with filing charges against him. He said he just made up a story so he could leave.

Mr. Estrada's videotaped statement to Detectives Greg Freeman and Eric Berger was played for the jury during the testimony of Detective Freeman. In the statement, Mr. Estrada said his mother told him that something had happened outside her apartment with his brother, but she told him no specifics. She said he had "split to Vegas." He continued to reiterate that he did not know exactly what happened, and only knew what little his mother had told him. After continuing to talk with the detectives, he eventually added further details, including that one of his brother's friends had come to the house, told him to come outside because some "fools" from "that group, DC" were outside and then all the "shit" happened. Mr. Estrada admitted defendant told him over the phone that he had shot someone outside his mother's house because "they were all jumping him." Defendant never said what he did with the gun. Mr. Estrada

gave his sister about \$1,000 to give to defendant, and defendant then left for Las Vegas.

Mr. Estrada stated throughout the interview that he was being honest with the detectives and that he just wanted to do what was best. At one point, Mr. Estrada asked what the detectives knew and they stated, in effect, that they could not compromise the investigation or influence his statement by relaying specific facts. They repeatedly told him they just wanted to know the truth.

Gloria Muñoz testified that she dated defendant for a short time in late 2012 and that he is the father of her daughter. She said she never knew defendant as Solo or heard him called by that nickname. She claimed not to recall what defendant's numerous tattoos looked like or their significance, except she acknowledged he had Solo and the letter "G" tattooed on one arm. She claimed not to recall anything about the day the police arrived to arrest defendant at their apartment, anything about the gun that was found in the apartment, or any knowledge about what happened on the night of December 9, 2012. The court found Ms. Muñoz was being deliberately evasive and allowed, over the defense objection, the prosecutor to ask leading questions based on her prior statement.

On cross-examination, Ms. Muñoz said she remembered being interviewed by the police, that she was scared, and that they wanted her to give them information she did not have.

Ms. Muñoz's videotaped statement was played for the jury during the testimony of Detective Freeman. In her statement, she insisted she knew nothing about what happened. After the detectives acknowledged that the investigation concerned a murder, Ms. Muñoz eventually admitted that defendant had told

her a story about getting into a fight outside his mother's home. She pantomimed the firing of a gun with her hands and said that defendant had to "get out of town" and went to stay with a friend in Las Vegas for awhile. Near the end of the interview, Ms. Muñoz admitted she had seen defendant with a gun before, so she assumed the one the police found in their apartment belonged to defendant.

Carlos Gutierrez, a detective with the Los Angeles County Sheriff's Department gang bureau, testified regarding his knowledge of Hispanic gangs, and in particular, the street gang known as Puente 13. He said it was the primary gang he monitors. Detective Gutierrez has investigated over 200 crimes related to Puente 13 gang members. He said that if a case involves a Puente 13 gang member, he usually investigates it, or one of his partners does. He attested to general background information about the gang's formation, membership and territory, and then defense counsel stipulated that Puente 13 is a recognized criminal street gang. Detective Gutierrez said that because of the filing of a gang injunction several years ago, there has been a recent trend for some Puente 13 members to expand their activities beyond the gang's traditional borders, or to move out of the area altogether but continue to participate in the gang.

Detective Gutierrez, with the assistance of photographs shown to the jury, identified as gang-related defendant's many tattoos, only a few of which we have described above. Detective Gutierrez testified the tattoo on defendant's chest that said Puente was a classic Puente 13 gang tattoo that was "symbolic" of the gang's history. He said that if a nonmember had such a tattoo, it would trigger some form of physical retaliation by the gang. He further explained that the Solo tattoo on defendant's

arm, along with the letter “G” which ordinarily stands for “gangster,” were gang-related. He also testified that defendant’s SGV tattoo stands for San Gabriel Valley, the region in which Puente 13 operates, and it references the gang’s affiliation with the Mexican Mafia. The letter “P” on defendant’s arm is also a “common symbol” used by Puente 13 members as a tattoo or on clothing like a baseball cap.

Detective Gutierrez testified that he learned, from another officer, that defendant had admitted being a Puente 13 gang member during an encounter with that other officer. Detective Gutierrez stated his opinion that defendant was a member of Puente 13 based on his tattoos and the fact he admitted his membership.

Detective Gutierrez also answered various hypotheticals based on the facts of the investigation that, in his opinion, the crimes with which defendant was charged were committed for the benefit of Puente 13.

The jury found defendant guilty of second degree murder and guilty of both counts of possession of a firearm by a felon. The jury returned true findings on the firearm use allegation as to count 1 and the gang allegation as to all three counts.

The court sentenced defendant to a determinate term of five years, plus 40 years to life in prison.

This appeal followed.

## **DISCUSSION**

### **1. The Admission of the Two Witness Statements (Mr. Estrada and Ms. Muñoz)**

Defendant contends the pretrial videotaped statements of Mr. Estrada and Ms. Muñoz were unreliable because they had been unlawfully coerced and therefore should not have been

admitted into evidence. Defendant contends their admission denied him a fair trial. We are not persuaded.

“The principles applicable to a coerced-testimony claim are settled. The defendant has no standing to assert a violation of another’s constitutional rights. The coerced testimony of a witness other than the accused is excluded in order to protect the defendant’s own federal *due process* right to a fair trial, and in particular, to ensure the *reliability* of testimony offered against him. A claim that a witness’s testimony is coerced thus cannot prevail simply on grounds that the testimony is the ‘fruit’ of some constitutional transgression against the witness. Instead, the defendant must demonstrate how such misconduct, if any, has directly impaired the free and voluntary nature of the anticipated testimony in the trial itself.” (*People v. Boyer* (2006) 38 Cal.4th 412, 444; accord, *People v. Badgett* (1995) 10 Cal.4th 330, 344 (*Badgett*).)

In resolving the propriety of the trial court’s order, we independently review the entire record to determine whether defendant was deprived of a fair trial because of the admission of the allegedly coerced witness testimony. (*Badgett, supra*, 10 Cal.4th at pp. 350-351.)

The transcripts of the pretrial statements do not reveal improper coercion. Defendant appears to suggest that the trial court found the statements were coerced. Not so. The court stated only that some of the language used by the interviewing detectives may have been “harsh” or that “some coercion” was used to get a statement. However, the court nonetheless found that the detectives repeatedly emphasized they only wanted the truth, and did not improperly “feed” the witnesses information to obtain a particular story. It was not improper for the detectives



to comment on the seriousness of the situation or to explain to the witnesses “the benefits and the disabilities” of making a truthful statement. The court found there was nothing to indicate the statements were involuntary or unreliable.

We agree. The tactics used by the detectives in interviewing both Mr. Estrada and Ms. Muñoz were standard and not abusive. Both interviews lasted less than an hour. The detectives did, sometimes forcefully, explain the potential consequences of making or not making a statement. And, particularly with Ms. Muñoz, the detectives suggested there was evidence that may support she aided and abetted defendant after the fact. However, nothing in the back-and-forth dialogue of either interview indicates the will of either witness was overborne. It is well established that the use of some deception does not automatically render a statement involuntary. “ ‘ “The courts have prohibited only those psychological ploys which, under all the circumstances, are so coercive that they tend to produce a statement that is both involuntary and unreliable.” ’ [Citation.]” (*People v. Williams* (2010) 49 Cal.4th 405, 443; see also *People v. Carrington* (2009) 47 Cal.4th 145, 171 [officer’s suggestion to defendant of possible explanations for the crime merely provided defendant an opportunity to provide details which was permissible].)

The detectives repeatedly explained they wanted only the truth and did not improperly feed the witnesses information to obtain a particular version of the facts. Indeed, when Mr. Estrada appeared to ask what they knew already, they informed him that they could not compromise or influence the investigation by providing him details, and reiterated they only

wanted to hear what he knew. There is nothing to indicate that any improper pressure was applied.

Moreover, the reliability of both statements is borne out by their consistency. Both Mr. Estrada and Ms. Muñoz independently provided substantially similar information. Both acknowledged defendant's moniker was Solo. Mr. Estrada said defendant had admitted he had shot someone in front of his mother's home after an altercation with some teenagers, and then fled to Las Vegas. Ms. Muñoz would not say the words that defendant had shot someone, but said defendant looked like he was in trouble, he looked "f---d up." She then pantomimed the gesture of shooting a gun and said that he told her he had to leave town. He left to stay with some friend in Las Vegas, before returning to their apartment where he was arrested. Ms. Muñoz also acknowledged she had previously seen defendant with a gun. The consistency of the two statements bolsters their reliability and demonstrates that Mr. Estrada and Ms. Muñoz gave truthful, if reluctant, statements to the detectives.

Defendant has failed to demonstrate that his right to a fair trial was undermined by the admission of the videotaped pretrial statements of Mr. Estrada and Ms. Muñoz.

## **2. The Expert Gang Testimony**

Defendant contends the testimony of Detective Gutierrez, offered by the prosecution as its gang expert, was improperly based on inadmissible hearsay. He argues the admission of such testimony violated his Sixth Amendment rights and warrants a reversal of not only the gang enhancement allegation, but his murder conviction. We disagree.

Our Supreme Court recently concluded, in *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*), that "[w]hen 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. It cannot logically be maintained that the statements are not being admitted for their truth. If 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, fn. omitted.)

In so holding, the Court explained that "[o]ur 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." (*Sanchez, supra*, 63 Cal.4th at p. 685.)

Rather, "[w]hat an expert *cannot* do is relate as true case-specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception." (*Sanchez, supra*, 63 Cal.4th at p. 686.) "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.)

In *Sanchez*, the gang expert attested to gang culture generally, about general background information related to the defendant's gang, its territory and habits, and also about that gang's history of collecting "taxes" and retaliating against individuals who failed to comply. (*Sanchez, supra*, 63 Cal.4th at p. 672.) The Supreme Court concluded such testimony, whether based on testimonial hearsay or not, was "relevant and admissible evidence." (*Id.* at pp. 698-699.)

Similarly here, Detective Gutierrez provided general testimony about Puente 13. He further testified, based on his personal knowledge and experience from working as a gang detective and his knowledge of the Puente 13 gang, that defendant's chest tattoo was a classic Puente 13 tattoo that reflected the gang's history dating back to the 1950's. His testimony was precisely the type of testimony *Sanchez* held was permissible expert testimony, irrespective of whether some of it was based on hearsay.

Detective Gutierrez did concede he was not familiar with defendant from prior personal contact with him. He testified that he learned, from research, that defendant had self-admitted his membership and moniker to another law enforcement official. Assuming the information Detective Gutierrez obtained was case-specific hearsay, it does not implicate *Sanchez* because defendant's gang membership was independently proven by other competent evidence. Miguel testified that when defendant and his companion confronted Miguel and his group of friends, defendant announced he was Solo from Puente. Cesar testified he heard defendant say the word Puente when he pointed the gun at Damien. There was photographic evidence of defendant's tattoos of Solo and Puente on his arm and across his chest.

Mr. Estrada and Ms. Muñoz acknowledged, in their pretrial statements, that Solo was defendant's moniker. Detective Gutierrez testified, based on his knowledge of Puente 13, that defendant's tattoos were consistent with classic Puente 13 tattoos.

Even if it were error for Detective Gutierrez to attest to the information learned from another officer, it was harmless because of the substantial independent evidence of defendant's gang membership. Any error was harmless beyond a reasonable doubt. (*People v. Geier* (2007) 41 Cal.4th 555, 608 [confrontation clause error is analyzed under the federal harmless-error standard].)

#### **DISPOSITION**

The judgment of conviction is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

SORTINO, J.\*

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