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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.

JULIUS SANDERS,

Defendant and Appellant.

B282018

(Los Angeles County
Super. Ct. No. TA138346)

APPEAL from a judgment of the Superior Court of Los Angeles County. Patrick Connolly, Judge. Affirmed.

Cynthia L. Barnes, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

Julius Sanders appeals from a judgment resulting from a plea agreement. He contends the trial court abused its discretion when it denied his request to continue his sentencing hearing. We affirm the judgment.

FACTS

On October 4, 2015, a drive-by shooting occurred at the Nickerson Gardens Housing Project in Los Angeles. The car involved in the shooting, a black Mercedes, was owned by George Stanford. Stanford admitted to Los Angeles Police Department (LAPD) Officer Manuel Moreno that he owned the 2005 black Mercedes and that he had driven it from Palmdale with his friends and fellow gang members. Stanford also told officers that Sanders (known as J-Scabby), Eric Gee, and Antone Presley (known as G-3) had taken his car that night. All were members of the Grape Street Crips gang. Stanford said he was asleep when a friend woke him up to tell him that they had crashed his car and that Gee and Presley had been shot.

Surveillance video from that night showed a black Mercedes stop near a parking lot at the Nickerson Gardens Housing Project. The videos also showed muzzle flashes emanating from a person in the front passenger seat shooting a gun. People began to run away, and someone got out of a car parked across the street and returned fire. The Mercedes tried to speed away, but crashed into several parked cars. Two individuals, later identified as Presley and Gee, got out of the Mercedes and ran. Gee was carrying a rifle. Sanders got out a little while after Presley and Gee did, and ran in a different direction. Sanders later admitted to Officer Moreno that he was in the Mercedes at the time of the shooting. Moreno also

identified Sanders, Presley, and Gee as the occupants of the Mercedes from the surveillance video.

The LAPD analyzed blood recovered from the front passenger seat of the Mercedes and discovered that it was Presley's. Presley had a gunshot wound on his left buttock.

The prosecution's gang expert testified that October 3rd is a gang holiday for the Grape Street Crips because they claim 103rd Street as their own, and the numbers translate to 10/3 or October 3rd. On this day, the younger members typically commit acts of violence to show their dedication to the gang. The Bounty Hunter Bloods, who are rivals to the Grape Street Crips, claim the Nickerson Gardens Housing Project as part of their territory. The expert opined the shooting was done to benefit the Grape Street Crips, a criminal street gang.

Sanders, Gee, and Presley were charged in a consolidated information. Sanders was charged with attempted premeditated murder (count 1; Pen. Code, §§ 187, subd. (a), 664),¹ shooting from a motor vehicle (count 3; § 26100, subd. (c)), and conspiracy to commit a crime (count 8; § 182, subd. (a)(1)). Gang and firearm enhancements were further alleged as to count 1. (§§ 186.22, subds. (b)(1)(C) & (b)(4), 12022.53, subds. (b), (c), & (e)(1).)

Sanders pled guilty to attempted murder as alleged in count 1 and admitted the section 12022.5, subdivision (a) firearm enhancement allegation. Three days before sentencing, Sanders moved for a continuance to investigate potential exculpatory information he received from a witness. The trial court denied his request.

¹ All further section references are to the Penal Code.

Pursuant to the plea agreement, Sanders was sentenced to an aggregate term of 13 years in state prison, comprised of the upper term of nine years on the attempted murder count plus a consecutive four-year term on the firearm enhancement.

Sanders timely appealed.

DISCUSSION

Sanders contends the trial court abused its discretion by denying his request for a continuance, which he claims deprived him of an opportunity to fully investigate the newly discovered information. We find no abuse of discretion.

A. Underlying Proceedings

On February 20, 2017, Sanders's wife contacted defense counsel with a letter from Caleb Gammage, who purportedly had newly discovered exculpatory evidence. Gammage wrote the following letter:

“On January 10th, 2017, detectives came to my home and seapeeon'd [*sic*] me to court. When I went to court thinking I was there for my personal case, but when I finished detective Murrano came and told the judge I need to go to the Department K, on the 11th floor. I went upstairs, then detective Murrano said I was really there to be a witness to help convict three possible guys. He showed me pictures and tried to focus on one guy in general. I told him and the judge I didn't know anything and as me and my mom tried to leave, they immediately swarmed us, escorted my mom out to another room, placed me in handcuffs, and sat me directly in front of the judge. The judge then told me if I don't comply, he will hold me until this trial is over and place me in a holding tank with the three men they were trying to convict at the time. I told

them I'll comply, but I still don't know anything. Then he said he would keep in contact with me and let me know when I had to come to court. When I was reunited with my mom, her nose and her shirt was bloody due to her high blood pressure and from the stress of what just happened in the court room. She then went to the district attorney's office and filed a complaint.

"Omar Bradley mentioned to me he was still coming to court to try and receive 'victim of crime money,' for whatever reason I'm unsure of.

"The detectives were asking me do I know where the guys they were trying to convict was from. They knew from Omar I worked at Hawkins, so they tried to make it out like I would be helping out 'my side of town'! Detective Murrano told me the guys were from a rival gang and was basically telling me that I should help out my side of town, no[t] knowing I do not associate myself with any gangs. He portrayed these guys as violent senseless young men who were basically out shooting at people in the nearby area. I went to jail a few months earlier before all this happened and ran into a few guys who had my name on their paperwork. They were just as confused about the situation as I was. Their paperwork was implying that they shot at me, but I was unsure of that statement because I never met or saw these guys ever in my life."

Defense counsel requested a continuance of the sentencing hearing in order to investigate the issues raised by Gammage in his letter. Sanders asserted that if he had the information contained in the letter prior to his no contest plea, he might have

tried to negotiate a more favorable disposition, or chosen to go to trial.

At a hearing on the continuance request, the prosecutor disagreed with Gammage's depiction of the events described in the letter. He indicated the judge did not say what Gammage had claimed, that his mother did not have any blood on her, and that she was talking calmly with other people in his office. The prosecutor said he was not certain whether he would call Gammage to testify because he was only a peripheral witness to the shooting.

The trial court denied the continuance request, stating that he specifically recalled Gammage when he came into court because he "put on quite the production in my courtroom. I stayed on the record because of that—because of his outbursts and the way he acted in this courtroom." Further, the trial court stated that Gammage did not say anything "remotely" in line with "what Mr. Gammage has stated was said in the courtroom."

B. Legal Analysis

"The determination of whether a continuance should be granted rests within the sound discretion of the trial court, although that discretion may not be exercised so as to deprive the defendant or his attorney of a reasonable opportunity to prepare." (*People v. Sakarias* (2000) 22 Cal.4th 596, 646.) The court considers "'not only the benefit which the moving party anticipates but also the likelihood that such benefit will result, the burden on other witnesses, jurors and the court and, above all, whether substantial justice will be accomplished or defeated by a granting of the motion.'" (*People v. Zapien* (1993) 4 Cal.4th 929, 972; *People v. Jenkins* (2000) 22 Cal.4th 900, 1037–1038 (*Jenkins*).) In *Jenkins*, the California Supreme Court found the

trial court was within its discretion to deny a continuance to permit the defendant's penalty phase consultant to undertake an open-ended investigation of his character and background because defendant had not demonstrated that a continuance would be useful in producing specific relevant mitigating evidence within a reasonable time. (*Jenkins, supra*, at p. 1038.)

Under the standards articulated above, we find no abuse of discretion. As in *Jenkins*, Sanders sought an open-ended investigation into the information provided by Gammage. Yet, Sanders failed to demonstrate that a continuance would have produced specific relevant exculpatory evidence within a reasonable time. Sanders fails to identify any specific exculpatory evidence which would have likely resulted from his investigation. Instead, it is purely speculative that Sanders would benefit from further investigation into anything in the letter. Indeed, the trial court expressly disbelieved the assertions made by Gammage. Sanders only asserts that the information provided by Gammage may serve as a basis for a potential motion to withdraw his no contest plea. That is insufficient to demonstrate a likelihood that a specific benefit would have resulted from the continuance.

Sanders contends a continuance should have been granted simply because trial court proceedings would not have been disrupted. However, disruption of the proceedings is only one factor to consider in deciding whether a continuance should be granted and it is not the dispositive factor here. Here, like in *Jenkins*, the trial court was within its discretion to deny the continuance for failure to specify a benefit likely to result from the continuance.

Even were we to find the trial court erred in denying the continuance, which we do not, Sanders has not demonstrated he was prejudiced by the denial of his motion for a continuance. Reversal is warranted only if it is reasonably probable he would have obtained a more favorable result in the absence of the error. (*People v. Watson* (1956) 46 Cal.2d 818, 836; *People v. Zapien*, *supra*, 4 Cal.4th at pp. 972–973; see, e.g., *People v. Hawkins* (1995) 10 Cal.4th 920, 945 [applying *Watson* standard to determine whether denial of request for continuance prejudiced defendant], disapproved on another ground in *People v. Blakeley* (2000) 23 Cal.4th 82, 89; *People v. Gonzalez* (2005) 126 Cal.App.4th 1539, 1549 [applying *Watson* standard to denial of midtrial request for continuance].)

The record does not demonstrate that any evidence, if it existed, would have any bearing on the strength of the evidence against Sanders. Sanders admitted to Detective Moreno that he was in the Mercedes at the time of the drive-by shooting. Surveillance video also placed him in the car at the time of the shooting. The video was of sufficient quality that Sanders could be identified and it recorded the entire event. Given this extremely strong evidence, it is not reasonably probable Sanders would have obtained a different result even if the continuance had been granted.

DISPOSITION

The judgment is affirmed.

BIGELOW, P.J.

We concur:

GRIMES, J.

ROGAN, J.*

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