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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.

GUADALUPE BARRAGAN,

Defendant and Appellant.

B227931

(Los Angeles County
Super. Ct. No. VA106907)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Michael A. Cowell, Judge. Affirmed as modified.

Deborah L. Hawkins, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Susan Sullivan Pithey and Taylor Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Guadalupe Barragan appeals from her conviction of the first degree murder of Guillermo Ramirez.¹ She contends: (1) refusal to give CALJIC No. 5.50.1 [prior threats] was prejudicial error; (2) as given, CALJIC No. 8.42 incorrectly stated the law of voluntary manslaughter; and (3) she was denied due process and a fair trial by the prosecutor's repeated reference to defendant by her gang moniker, "Vicious." We affirm.²

FACTS

A. *The People's Case*

Viewed in accordance with the usual rules on appeal (*People v. Virgil* (2011) 51 Cal.4th 1212, 1263 (*Virgil*)), the evidence established that in 2004, the criminal street gang known as the South Side Playerz claimed as its territory most of the City of South Gate. At the time, Carlos Munayco (aka Ziggy) was the self-admitted "shot-caller" of the South Side Playerz. Michael Sosa (aka Thumper) was Munayco's right-hand man, second in command of the South Side Playerz. The 100 member gang also included defendant (aka Vicious), Joseph Medina (Skippy), Louis Real (Joker), Melissa Mercado

¹ Defendant, Melissa Mercado, Louis Real and Joseph Paul Medina were jointly charged by information with the first degree murder of Guillermo Ramirez; a gang enhancement (Pen. Code, § 186.22, subd. (b)) and firearm enhancements (Pen. Code, § 12022.53, subdivisions (b), (c), (d), (e)) were also alleged. (All future undesignated statutory references are to the Penal Code.) Defendant and Medina were tried together. Mercado accepted a plea bargain and testified at the trial; Real was to be tried separately and the disposition of his case is not before us. Medina was found not guilty of all charges. Defendant was convicted of first degree murder and the jury found true the allegation that she personally discharged a firearm proximately causing great bodily injury or death (§ 12022.53, subd. (d)); the gang enhancement was found not true. Defendant was sentenced to 50 years to life in prison, comprised of 25 years to life for first degree murder, plus 25 years to life pursuant to section 12022.53, subdivision (d). She timely appealed.

² Defendant contends and the People concede that defendant is entitled to one more day of custody credit for the day she was arrested. We agree and order the abstract of judgment modified accordingly.

(Trouble) and Cesar Martinez (Capone). Munayco's sister, Carla Barrera, was not a member of the South Side Playerz, but in 2004 she lived with her brother and his family and was acquainted with the members of his gang.

In November 2004, the South Side Playerz gang was rivals with the criminal street gang known as the Compton Vario Tortilla Flats, or T-Flats. Julio Gomez (Gizmo) was a member of the Tortilla Flats. At the time, Gomez lived at 8469 Chestnut Street in South Gate. Although located in territory claimed by the South Side Playerz, the house was known to the police as a place where members of the Tortilla Flats congregated and from which drugs were sold. Gomez's brother, murder victim Guillermo Ramirez, had recently moved out of the Chestnut Street house but he was visiting there on November 27, 2004. Ramirez was not known as a gang member by police, but defendant knew him as a member of the Tortilla Flats named "Michael."

1. The Sosa Shooting

At about 3:30 p.m. on November 27, 2004, defendant and her boyfriend Sosa were leaving a South Gate restaurant when Sosa was fatally shot. Defendant recognized the shooter as rival gang member Gomez ("Gizmo"), but did not reveal this fact to the police. To officers, she described the shooter as a male Hispanic wearing a black hooded sweater that covered his face. Defendant later told members of the South Side Playerz that she intended to avenge Sosa by shooting Gomez.

2. The Ramirez Shooting

It was undisputed at trial that defendant shot Ramirez that night with the intention of killing him. Defendant testified as much. The issue at trial was whether the shooting was a premeditated murder, voluntary manslaughter or self-defense. That it was premeditated was supported by fellow gang member Mercado's testimony that the night Sosa was killed, she gathered with other South Side Playerz at an apartment in Los Angeles to mourn him. Defendant, Medina and Munayco were also there. Mercado did not remember who, but someone at the gathering instructed her to walk up to a house,

knock on the door, ask for narcotics and then return to the car. Although she had no money to purchase drugs and no one gave her any money, Mercado got into a car with defendant and several other gang members to do as she was told because she feared being punished for refusing; more gang members followed in two other cars. Mercado did not see any guns. Mercado was driven to 8469 Chestnut Street, where she and defendant knocked on the metal security door. Mercado asked the man who eventually came to the door for “a dime of dope.” When the man walked away Mercado left defendant standing at the door and walked back to the car because she suspected something bad was going to happen. As Mercado reached the car, she heard the gunshots. After the shooting, someone drove Mercado and defendant away.

That night, Sophia Orozco was visiting relatives at the Chestnut Street house where the Ramirez killing occurred. At about 11:00 p.m., Orozco was in the living room with Ramirez who was playing with Orozco’s children. Gomez was in his room in the back of the house. After Orozco’s son, R.O., opened the front door in response to someone knocking, Orozco heard a woman’s voice ask for “Julio” and R.O. say “hold on.” As R.O. walked towards Gomez’s room, Orozco saw defendant poke her head around the door and look about the living room. Orozco next saw Ramirez get up from the floor and put his hands out as if to block something. Orozco saw sparks fly and heard a burst of three or four gunshots followed several seconds later by a burst of three more gunshots. While other family members tried to render aid to the fallen Ramirez, Orozco ran outside. She saw Medina holding a rifle, pacing back and forth in the middle of the street; two women were walking towards a white car. The two women and Medina got into the white car and drove away, followed by a car that had been parked behind the white car.

South Side Playerz gang member Martinez was arrested at Sosa’s funeral and interviewed separately by the lead investigator on the Sosa homicide and the lead investigator on the Ramirez homicide. Martinez stated that about a week after Ramirez was killed, defendant told Martinez that she “knocked on the door. A little kid answered. She asked to buy dope. The victim walked up to the threshold. She pulled out a gun shot

him in the chest. He fell to the ground. And then . . . she unloaded on him when he was on the ground.” Defendant told Martinez that Gomez (not Ramirez) had been her intended target.

B. *The Defense Case*

Defendant testified that she was 18 years old, a member of the South Side Playerz and a daily methamphetamine user at the time Sosa and Ramirez were killed in November 2004. She stopped being a gang member when she became pregnant in 2006. Defendant’s moniker, “Vicious,” came from her reputation as a vicious player on her junior high school basketball team.

Defendant recounted that while eating at a restaurant with Sosa on November 27, 2004, loud stereo music attracted their attention to two cars on the street outside the restaurant. Defendant recognized Gomez, known to defendant as “Gizmo,” as the driver of one car and Ramirez, known to defendant as “Michael,” as a passenger in the other car. Defendant knew Gomez and Ramirez as members of the Tortilla Flats; they were the only two members of that gang who defendant knew. As defendant and Sosa were leaving the restaurant a few minutes later, defendant saw Gomez come around the side of the building and start shooting at Sosa. Defendant realized Sosa had been hit. She grabbed his cell phone to call 911, and the gun tucked in Sosa’s waistband in case the shooter came back. She put the gun in her own waistband but her fingers were shaking too much to dial 911. Defendant called Sosa’s sister, Beatrice. Beatrice told defendant not to say anything to the police. When the police arrived, defendant declined to be interviewed at the police station because she thought she would get to the hospital sooner if she were interviewed at the scene. During the hours that she was in the back of a patrol car being interviewed, Sosa’s gun remained hidden in her waistband. Defendant did not tell the police who shot Sosa because she was afraid of retaliation. At about 9:00 p.m. a police officer brought defendant home.

Minutes after arriving home, another member of the South Side Playerz picked up defendant and drove her to an apartment in Los Angeles where about 25 people were

congregated, including some South Side Playerz. Defendant told them that Gomez shot Sosa but no one made any plans to retaliate. After awhile, defendant asked gang member Real for a ride home to South Gate. Real agreed to drive defendant, Medina and Mercado, and to stop on the way to pick up some methamphetamine at a place Medina recommended. Defendant was not familiar with the spot and it was not where she believed Gomez lived.

Upon arriving at the location, defendant and Mercado went to the door while Real and Medina waited in the car. Defendant still had Sosa's gun tucked in her waistband. In response to defendant's knock, a child's voice said, "Hold on." When a man came to the door, Mercado asked for dope. Less than a minute later, Ramirez opened the door holding methamphetamine in his hand.³ Defendant immediately recognized Ramirez as the person she knew as Michael and whom she saw in a car in front of the restaurant shortly before Gomez killed Sosa. Ramirez's eyes opened wide and he reached into his hip pocket. Believing Ramirez had recognized her and was reaching for a gun, defendant pulled Sosa's gun out of her waistband and shot Ramirez with the intention of killing him before he could kill her. Defendant testified that she "just kept on shooting and there was no stop to it. I just kept shooting." When she did stop, defendant ran back to the car and was driven away. The other occupants of the car asked defendant what had happened, but she just told them to drive her home. At Sosa's wake a few days later, defendant told Martinez that she shot some guy, referring to Ramirez. A few weeks later, defendant gave the gun to another member of the South Side Playerz. Defendant testified that when she shot Ramirez, she was thinking only about protecting herself, not about the gang. She had not planned on shooting anyone that night.

³ Police found a Ziploc baggie containing other smaller Ziploc baggies of what was later determined to be methamphetamine under Ramirez's body.

DISCUSSION

A. *Failure to Give CALJIC No. 5.50.1 was Harmless*

Defendant contends she was denied due process and a fair trial as a result of the trial court refusing her request to give CALJIC No. 5.50.1, which explains how jurors may use evidence that the victim participated in a prior assault on the defendant. She argues that the evidence that she saw Ramirez, who she believed was a member of a rival gang, in a car in front of the restaurant moments before Sosa was killed by another member of that same rival gang, supported giving CALJIC No. 5.50.1. We agree but find the error harmless.

“A pinpoint instruction ‘relate[s] particular facts to a legal issue in the case or “pinpoint[s]” the crux of a defendant's case, such as mistaken identification or alibi.’ [Citation.] A trial court must give a pinpoint instruction, even when requested, only if it is supported by substantial evidence. [Citation.]” (*People v. Ward* (2005) 36 Cal.4th 186, 214-215.)

CALJIC No. 5.50.1 reads: “Evidence has been presented that on [a] prior occasion[s] *the alleged victim* [threatened] [or] [assaulted] [or participated in an assault or threat of physical harm upon] *the defendant*. If you find that this evidence is true, you may consider that evidence on the issues of whether the defendant actually and reasonably believed [his] [her] life or physical safety was endangered at the time of the commission of the alleged crime. [¶] In addition, a person whose life or safety has been previously threatened, or assaulted by [another] [others] is justified in acting more quickly and taking harsher measures for self protection from an assault by [that person] [those persons], than would a person who had not received threats from or previously been assaulted by the same person [or persons].” (Italics added.)

CALJIC No. 5.50.1 is a pinpoint instruction related to self-defense. Where, as here, the jury is instructed on the general principals of self-defense with CALJIC No. 5.30 [reasonable belief in the necessity to defend against imminent peril of death or great bodily injury] and imperfect self-defense with CALJIC No. 5.17 [actual but

unreasonable belief in the necessity to defend against imminent peril of death or great bodily injury may reduce murder to manslaughter], CALJIC No. 5.50.1 expands on factors that might make a reasonable person believe that there is imminent peril.

As applied to the facts of this case, the evidentiary premise of CALJIC No. 5.50.1 is that earlier on the day defendant killed Ramirez, Ramirez participated in an assault upon defendant by acting as Gomez's lookout when Gomez shot at defendant and Sosa, fatally wounding Sosa. From defendant's testimony she was standing with Sosa when Gomez fired multiple rounds at them, a rational jury could have concluded that Gomez intended to shoot both defendant and Sosa, both of whom were rival gang members, but hit only Sosa. That victim Ramirez participated in the shooting by acting as Gomez's lookout can be inferred from defendant's testimony that she recognized Ramirez and Gomez as members of the same rival gang and that she saw them outside the restaurant a few minutes before she saw Gomez shoot Sosa, as well as the gang expert's testimony about the manner in which gang members use a "lookout" when they are committing crimes. This evidence warranted giving CALJIC No. 5.50.1 as requested.

Although we find the trial court erred in not giving CALJIC No. 5.50.1, we find the error harmless. We review a failure to give a requested instruction under the standard articulated in *People v. Watson* (1956) 46 Cal.2d 818, 836: whether it is reasonably probable a more favorable result would have been reached in the absence of the error. (*People v. Breverman* (1998) 19 Cal.4th 142, 178.) We conclude that it is not reasonably probable for two reasons. First, even in the absence of CALJIC No. 5.50.1, defense counsel argued that defendant shot Ramirez because she reasonably believed he was reaching for a gun: "T Flats, with Mr. Ramirez in the car, [] killed her boyfriend earlier in the day by gunfire. [¶] You figure this is going through her mind." Second, the evidence against defendant was overwhelming. Martinez testified that defendant stated her intention to avenge Sosa's death by shooting Gomez. It is undisputed that defendant was armed when she went to the Chestnut Street location. Although defendant testified she believed Gomez lived elsewhere, the jury was entitled to credit other evidence that defendant knew Gomez lived on Chestnut Street, especially in light of evidence that

either she or Mercado asked for “Julio,” which was Gomez’s first name. Indeed, defendant’s testimony that on the same day a Tortilla Flats gang member had killed her boyfriend, she and other South Side Playerz unknowingly later went to a Tortilla Flats hangout to buy drugs borders on the “inherently improbable.” (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) A reasonable inference is that defendant used the ploy of asking to buy drugs to get the occupants of the house to open the door. When Ramirez came to the door, defendant recognized him from the earlier shooting and immediately shot him at close range with the admitted intention of killing him. Although not convinced that defendant shot Ramirez for the benefit of her gang, the jury accepted the prosecution theory that defendant did so as intended payback for the earlier killing of her boyfriend, a killing in which she believed Ramirez had participated. It is not reasonably probable the jury would have come to a more favorable result had it been given CALJIC No. 5.50.1

B. The Modified Version of CALJIC No. 8.42 Did Not Misstate the Law

CALJIC No. 8.42 explains the heat of passion theory of voluntary manslaughter. Defendant contends it was error to give a modified version of CALJIC No. 8.42, which added the following italicized phrase: “If there was provocation, *whether the provocation was by the victim or if the defendant reasonably believed that there was provocation by the victim*, of short or long duration, but of a nature not normally sufficient to arouse passion, or if sufficient time elapsed between the provocation and the fatal blow for passion to subside and reason to return, and if an unlawful killing of a human being followed the provocation and had all the elements of murder, as I have defined it, the mere fact of slight or remote provocation will not reduce the offense to manslaughter.”⁴ Relying on *People v. Spurlin* (1984) 156 Cal.App.3d 119 (*Spurlin*), she

⁴ As given in its entirety, CALJIC No. 8.42 read: “To reduce an unlawful killing from murder to manslaughter upon the ground of sudden quarrel or heat of passion, the provocation must be of the character and degree as naturally would excite and arouse passion, and the assailant must act under the influence of that sudden quarrel or heat of passion. [¶] The heat of passion which will reduce a homicide to manslaughter must be such a passion as naturally would be aroused in the mind of an ordinarily reasonable

argues the instruction misstated the law because it did not inform the jury that it could consider whether the victim (Ramirez) aided and abetted the person causing the provocation (Gomez). We find no error.

Manslaughter is a lesser included offense of murder. The distinguishing factor between murder and manslaughter is the absence of malice in manslaughter. Voluntary manslaughter is the unlawful killing of a human being without malice “upon a sudden quarrel or heat of passion.” (§ 192, subd. (a).) In *People v. Verdugo* (2010) 50 Cal.4th 263, 294 (*Verdugo*), our Supreme Court recently reaffirmed the “settled principle” that to reduce murder to manslaughter under the heat of passion theory, the provocation which incites the defendant to homicidal conduct in the heat of passion must be caused *by the victim*, or be conduct reasonably believed by the defendant to have been engaged in *by the victim*. It expressly rejected what it characterized as dictum in *Spurlin, supra*, that suggested a contrary rule. (*Ibid.*)

Here, defense counsel agreed to the trial court’s modification of CALJIC No. 8.42. As such, defendant is precluded from challenging the instruction on appeal. (*People v. Davis* (2005) 36 Cal.4th 510, 539; *People v. Riazati* (2011) 195 Cal.App.4th 514, 529.) Raising the issue in a motion for new trial does not substitute for a timely objection. (Cf.

person in the same circumstances. A defendant is not permitted to set up [his] [her] own standard of conduct and to justify or excuse [himself] [herself] because [his] [her] passions were aroused unless the circumstances in which the defendant was placed and the facts that confronted [him] [her] were such as also would have aroused the passion of the ordinarily reasonable person faced with the same situation. Legally adequate provocation may occur in a short, or over a considerable, period of time. [¶] The question to be answered is whether or not, at the time of the killing, the reason of the accused was obscured or disturbed by passion to such an extent as would cause the ordinarily reasonable person of average disposition to act rashly and without deliberation and reflection, and from passion rather than from judgment. [¶] If there was provocation, *whether the provocation was by the victim or if the defendant reasonably believed that there was provocation by the victim*, of short or long duration, but of a nature not normally sufficient to arouse passion, or if sufficient time elapsed between the provocation and the fatal blow for passion to subside and reason to return, and if an unlawful killing of a human being followed the provocation and had all the elements of murder, as I have defined it, the mere fact of slight or remote provocation will not reduce the offense to manslaughter.”

People v. Williams (1997) 16 Cal.4th 153, 254 [issue of prosecutorial misconduct not preserved for appeal where raised for the first time in motion for new trial].)

Nor has defendant established that her trial counsel was ineffective in failing to object to the instruction inasmuch as it was a correct statement of the law. Consistent with the rule that the provocation which incites a defendant to homicidal conduct in the heat of passion must be conduct reasonably believed by the defendant to have been engaged in by the victim, defense counsel was free to argue that it was Ramirez's conduct of participating in the Sosa shooting that provoked defendant to shoot Ramirez in the heat of passion.

C. Defendant Was Not Prejudiced by References to Defendant by Her Gang Moniker, "Vicious"

Defendant argues that repeated references to her moniker, "Vicious," by witnesses and by the prosecutor violated her right to a fair trial. We first discuss the trial court's ruling and then address defendant's argument.

1. Trial Court's Ruling

Prior to trial, defendant moved to exclude references in front of the jury to her gang name, "Vicious." She argued that the use of the name was an improper suggestion of criminal disposition under Evidence Code section 1101, subdivision (a) (§ 1101(a)) and was unduly prejudicial under Evidence Code section 352.⁵ The trial court denied the motion, expressly finding that although there was prejudice in the use of the name, the probative value of the evidence outweighed that prejudice. The trial court addressed the criminal disposition argument only inferentially, saying in part: "Vicious, such as it is, is an attribute. It's not necessarily a derogatory one, depending on the circumstances."

⁵ All undesignated statutory references in Part C of our opinion are to the Evidence Code.

2. Defendant's Argument on Appeal

It is unclear whether defendant is arguing on appeal that the trial court incorrectly ruled that the probative value outweighed the prejudice (§ 352), or that the prosecutor committed misconduct in her almost incessant use of “Vicious.” Although defendant argued sections 352 and 1101 in the trial court, as best we can tell, defendant’s argument on appeal is that the prosecutor’s repeated use of “Vicious” – as opposed to its admissibility – created undue prejudice. In her opening brief, counsel states: “The question posed is not the admissibility of the evidence. The question is the misuse of that admissible evidence.” (Emphasis in original.) The caption of defendant’s argument on this subject suggests that the repeated use of “Vicious” violated defendant’s right to due process and a fair trial.⁶ She argues, “Again, the issue here is not the total exclusion of the moniker from the jury’s hearing. The issue is its prejudicial overuse by the prosecutor.” Defendant’s fair trial and due process argument seems to be based on the point that the underlying error was prejudicial under *Chapman v. California* (1967) 386 U.S. 18. (See *U.S. v. Farmer* (2nd Cir. 2009) 583 F.3d 131 (*Farmer*) [misuse of gang moniker may constitute a denial of due process].)

We conclude that, whether based on prosecutorial misconduct, section 352 or on section 1101(a), defendant forfeited the argument by failing to object to the prosecutor’s repeated use of her moniker at trial. Even if not forfeited we find the error harmless even under the more rigorous *Chapman* standard. As we have observed, the trial court denied defendant’s written motion to exclude any reference to “Vicious” at trial, based on sections 352 and 1101(a) thus finding evidence of the moniker admissible. Afterwards, the prosecutor referred to “Vicious” 26 times in opening statement. Not once did defendant object on the grounds that to do so was argumentative and therefore improper

⁶ The argument is titled, “ALTHOUGH THE EXISTENCE OF A GANG MONIKER MAY BE ADMISSIBLE EVIDENCE, CONSTANT REFERENCE TO THAT MONIKER THROUGHOUT TRIAL VIOLATES A DEFENDANT’S FEDERAL DUE PROCESS RIGHT TO A FAIR TRIAL (U.S. CONST. AMEND. V AND AMEND. XIV).”

in an opening statement. (*People v. Farnam* (2002) 28 Cal.4th 107, 168.) Defendant argues that in light of the earlier admissibility ruling, any further objection would have been futile. But, nothing the court stated in ruling the evidence admissible could be construed as giving the prosecutor the green light to use “Vicious” repeatedly or as disguised argument. Indeed, toward the end of opening statement the trial court sustained defendant’s objection that the prosecutor’s statement, “And you will know when this case is done why they call Vicious, Vicious,” was argumentative. Defendant’s futility argument fails.

Assuming the argument was not forfeited, we address the merits of defendant’s point, ultimately finding any error was harmless. Evidentiary rulings under section 352 or 1101(a) are reviewed under the abuse of discretion standard. (*People v. Lee* (2011) 51 Cal.4th 620, 642 [§ 352]; *People v. Spector* (2011) 194 Cal.App.4th 1335, 1373 [§ 1101].)

Even though gang evidence of a moniker may be admissible (*People v. Leon* (2010) 181 Cal.App.4th 452, 462), repetition of a moniker with inherently negative connotations can be the basis of an unfair trial. *Farmer, supra*, 583 F.3d 131 is instructive. In *Farmer*, the defendant was convicted of murdering White and attempting to murder Patterson for the purpose of maintaining or elevating the defendant’s position in a criminal street gang. The government introduced evidence that the defendant’s nickname was “Murder,” and repeatedly referred to the defendant by that name. The *Farmer* court articulated the following three factors to be considered in deciding whether a defendant has been prejudiced by use of a nickname: (1) the relevance of the nickname (e.g. to identity); (2) whether the name was suggestive of a criminal disposition; and (3) the frequency of its use by the prosecution. (*Id.* at pp. 145-146.) It concluded that the prosecutors in that case “invited prejudice by repeatedly emphasizing Farmer’s nickname in a manner designed to suggest that he was known by his associates as a murderer and that he acted in accordance with that propensity” in committing the charged crimes. (*Id.* at pp. 136, 146-147.)

Under the analytical framework of *Farmer*, it was error to allow the prosecutor to repeatedly refer to defendant as Vicious. That name was used over and over, essentially as a shorthand version of “Defendant was a vicious person.” The prosecutor’s use of the moniker was particularly pronounced in opening statement but it was also used throughout the trial when witnesses were being examined. Rarely, if ever, did the prosecutor refer to defendant by the name some of the witnesses knew her by, “Lupe” or “Guadalupe,” or even by the customary “defendant.” The effect of this tactic was that the prosecutor argued defendant’s criminal disposition throughout the trial.

We nevertheless find the error harmless. Again, *Farmer* is instructive. There the defendant was charged with both murder and attempted murder. The court, after finding repeated reference to defendant’s gang name, “Murder,” improper, addressed whether the error was harmless. Although it reversed the attempted murder conviction finding prejudice, the court affirmed the murder conviction, finding the evidence supporting that charge was so overwhelming that it nullified any prejudice resulting from the inappropriate use of the gang name. This evidence included testimony from multiple witnesses describing in detail the sequence of events before, during and after the murder. (*Farmer, supra*, 583 F.3d at pp. 136, 147-148.)

So, too, was the evidence against defendant here overwhelming. Defendant stated her intention to avenge Sosa’s death by shooting Gomez, that same night she went to the T-Flats home armed, she used a ploy to get the occupants of the house to open the door, and she shot Ramirez multiple times at close range with the admitted intention of killing him. Her story about wanting to buy drugs from a rival gang on the same day that a member of that same rival gang had killed her boyfriend made no sense. We have no doubt defendant would have been convicted of Ramirez’s murder even if she had no nickname.

DISPOSITION

The trial court is directed to prepare an amended abstract of judgment reflecting that defendant is awarded 791 days of presentence custody credit, comprised of 791 days

in actual custody, and to forward a certified copy to the Department of Corrections and Rehabilitation. As so modified, the judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.