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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN A. WHITE and ALVIN
JACKSON,

Defendants and
Appellants.

B263887, B266107

(Los Angeles County
Super. Ct. No. TA133697)

APPEAL from a judgment of the Superior Court of Los Angeles County, Eleanor J. Hunter, Judge. Affirmed.

Christine C. Shaver, under appointment by the Court of Appeal, for Defendant and Appellant Kevin A. White.

Correen Ferrentino, under appointment by the Court of Appeal, for Defendant and Appellant Alvin Jackson.

Kamala D. Harris, Attorney General, Kathleen Kenealy, Acting Attorney General, Gerald A. Engler, Chief Assistant

Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr., Connie H. Kan, and Stacy S. Schwartz, Deputy Attorneys General, for Plaintiff and Respondent.

The trial court sentenced Kevin A. White and Alvin Jackson to three consecutive 25-years-to-life terms after a jury found them guilty of three counts of attempted murder and found true that they discharged a firearm in commission of the crimes, causing great bodily injury. White contends the trial court abused its discretion in sentencing him to consecutive rather than concurrent terms. Jackson contends insufficient evidence supported the gang finding and the court erred in denying his request to bifurcate trial on the gang allegations and his request after trial for a copy of the trial transcript. White joins in Jackson's first two contentions, and we consider the appeals together. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On June 6, 2014, Patricia Abrams hosted a party for her granddaughter's 10th birthday in the City of Compton. At least 15 of the 25 guests were children spending the night at Abrams's house, which is located in territory claimed by the Leuders Park Piru street gang. Just before 11:00 p.m., while Abrams was on the front porch talking with her son-in-law, Andrew Wilson, and his mother, Sherry Braddy, White sped past the house in his car, braked hard, and quickly reversed back to the house. Jackson, in the passenger seat wearing a red hat and what Braddy described as a "wife-beater" tee shirt, rolled down his window and asked, "What's up, Blood?" Abrams understood "Blood" to be a gang related term. Jackson then fired 18 rounds from a .22 caliber

semi-automatic pistol at the people on the porch, striking and seriously wounding Abrams and sending bullets into Abrams's front door, living room, and bedroom and a car parked in front of the house.

Sheriff's deputies received a dispatch call about the shooting with a description of the suspect vehicle. They stopped the car a few blocks from Abrams's house, detained White and Jackson, and gave them tests for gunshot residue, which ultimately returned positive. Braddy and Wilson were escorted to the location and identified Jackson and the car.

The gun was never found, but in recorded jailhouse telephone calls both defendants explained to a third party the location of a "shoe," which police believe was code for the gun.

During his police interview, White admitted to detectives that he was a member of the MOB ("Money Over Bitches") Piru street gang (Mob Piru), a rival of Leuders Park Piru, with the moniker of "King," "Killer King" or "KK."

Defendants were charged with three counts of attempted murder and one of shooting at an inhabited dwelling. (Pen. Code, § 246, §§ 664/187, subd. (a).)¹ It was further alleged that Jackson personally and intentionally discharged a firearm, which proximately caused great bodily injury (§ 12022.53, subds. (b)-(e)); the offenses were committed for the benefit of, 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 (§ 186.22, subd. (b)(1)(C)); and White had suffered previous felony convictions, including possession for sale of narcotics, grand theft person, and a gun-related charge,

¹ All future statutory references are to the Penal Code.

which, along with his gang affiliation, made him ineligible for probation (§ 1203, subd. (e)(4)). Defendants pleaded not guilty to all counts and denied all special allegations.

At trial, Los Angeles Sheriff's Sergeant George Bernal testified as a gang expert. He said Mob Piru commits assaults, robberies, carjackings, burglaries, narcotics sales, illegal weapons possessions, vehicle thefts, drive-by shootings, and attempted murders. Gang members commonly drop off their guns in their own territory after completing a crime, to be retrieved by others. Bernal testified that red clothing and white tee shirts are considered to be gang attire, and June 6, when the shooting took place, was "Hood day," a day Mob Piru celebrates the gang's founding. Bernal opined that White and Jackson were Mob Piru members, and when posed a hypothetical question based on the facts of the case, opined that the shooting was committed in association with and for the benefit of the gang. Bernal explained that a drive-by shooting benefits a gang because it elevates the gang's reputation for violence, which tends to instill fear in the community so that members of the community become less likely to challenge the gang or call or cooperate with police when they witness a crime. A reputation for violence also tends to inhibit violent acts from rival gangs who fear retaliation.

A jury found defendants guilty on all counts and found all special allegations to be true. The trial court sentenced them to three consecutive 25-years-to-life terms, for a total of 75 years to life. Defendants appealed.

DISCUSSION

I. White's Appeal

White contends the trial court abused its discretion and violated his Fourteenth Amendment right to due process by imposing consecutive rather than concurrent sentences.

Section 669 provides, in pertinent part, “When any person is convicted of two or more crimes, . . . the second or other subsequent judgment upon which sentence is ordered to be executed shall direct whether the terms of imprisonment or any of them to which he or she is sentenced shall run concurrently or consecutively. . . . [¶] . . . Upon the failure of the court to determine how the terms of imprisonment on the second or subsequent judgment shall run, the term of imprisonment on the second or subsequent judgment shall run concurrently.” The court may direct that any or all terms of imprisonment shall run consecutively when one or more aggravating circumstances are present during commission of the crimes. (*People v. King* (2010) 183 Cal.App.4th 1281, 1323.)

“The trial court has broad discretion with regard to sentencing, and its decision will be affirmed on appeal, so long as it is not arbitrary or irrational and is supported by any reasonable inferences from the record. [Citation.] The party attacking the sentence must show the sentencing decision was irrational or arbitrary and if it fails to do so, “the trial court is presumed to have acted to achieve legitimate sentencing objectives”” (*People v. King, supra*, 183 Cal.App.4th at p. 1323.)

California Rules of Court, rule 4.421, lists aggravating circumstances relating to crimes and those who commit them. (Cal. Rules of Court, rule 4.421.) As pertinent here, rule 4.421

provides that circumstances in aggravation include that the crime involved great violence, threatened great bodily harm, and showed a high degree of callousness (rule 4.421(a)(1)); that a weapon was used (rule 4.421(a)(2)); that the victim was particularly vulnerable (rule 4.421(a)(3)); and that the manner in which the crime was committed reflected planning, sophistication, or professionalism (rule 4.421(a)(8)), that the defendant's conduct posed a serious danger to society (rule 4.421(b)(1)); and that the defendant's prior convictions were numerous or of increasing seriousness (rule 4.421(b)(2)). Only one criterion need be met to justify a consecutive sentence. (*People v. King, supra*, 183 Cal.App.4th at p. 1323.)

This crime satisfies several aggravating circumstances criteria. The shooting involved great violence, threatened and in fact caused great bodily harm, and demonstrated defendants' callousness and the serious danger they pose to society. The risk of injury or death was high not only to those on the porch, but also to all the children in the house, as some of the gunshots went through the outside walls of the house and into the living room and bedroom. The victims were particularly vulnerable, and defendants' ability to hide the gun shows a moderate amount of professionalism or sophistication. Finally, White's convictions, including possession for sale of narcotics, grand theft person, a gun charge, and the instant attempted murder, were numerous and of escalating seriousness. Because multiple aggravating circumstances were present, the trial court acted well within its discretion in imposing consecutive sentences.

White contends he should serve concurrent sentences because he merely drove the car; it was Jackson who fired the gun. However, any person who aids and abets in the commission

of a felony is a principal and is equally guilty of committing the crime. (§ 31; *People v. Fleming* (1961) 191 Cal.App.2d 163, 168.) Here, a jury found White guilty under the aider and abettor theory, making him a principal in the crime and equally guilty of it.

II. Jackson's Appeal

A. Sufficiency of Gang Evidence

The jury found defendants were described by section 186.22, subdivision (b)(1), which prescribes an enhanced penalty for “any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members.” Jackson, joined by White, contends the evidence was insufficient to satisfy the gang finding because there was no evidence he committed the shooting with the specific intent to promote, further, or assist criminal conduct by a gang. The contention is arguably moot because the trial court imposed no sentence enhancement on the gang finding. In any event, the contention is without merit.

In 1988, the Legislature found that “California is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods.” (§ 186.21.) To “seek the eradication of criminal activity by street gangs,” the Legislature enacted the Street Terrorism Enforcement and Prevention Act (the STEP Act), section 186.20 et seq. (*Ibid.*)

The STEP Act prescribes enhanced penalties for “any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any

criminal conduct by gang members.” (§ 186.22, subd. (b)(1).) The act defines a “criminal street gang” as “any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more [enumerated] criminal acts . . . having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.” (§ 186.22, subd. (f).)

The STEP Act “does not criminalize mere gang membership; rather, it imposes increased criminal penalties only when the criminal conduct is felonious and committed not only ‘for the benefit of, at the direction of, or in association with’ a group that meets the specific statutory conditions of a ‘criminal street gang,’ but also with the ‘specific intent to promote, further, or assist in any criminal conduct by gang members.’” (*People v. Gardeley* (1996) 14 Cal.4th 605, 623-624.) Not every crime committed by gang members is intended to benefit the gang. But “if substantial evidence establishes that the defendant intended to and did commit the charged felony with known members of a gang, the jury may fairly infer that the defendant had the specific intent to promote, further, or assist criminal conduct by those gang members.” (*People v. Albillar* (2010) 51 Cal.4th 47, 68; accord *People v. Villalobos* (2006) 145 Cal.App.4th 310, 322 [“Commission of a crime in concert with known gang members is substantial evidence which supports” a gang enhancement].) Gang enhancement elements must be established beyond a reasonable doubt by substantial evidence. (*People v. Vy* (2004) 122 Cal.App.4th 1209, 1224.)

“In considering a challenge to the sufficiency of the evidence to support an enhancement, we review the entire record

in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] We presume every fact in support of the judgment the trier of fact could have reasonably deduced from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] ‘A reviewing court neither reweighs evidence nor reevaluates a witness’s credibility.’” (*People v. Albillar, supra*, 51 Cal.4th at pp. 59-60.) “To prove a gang allegation, an expert witness may testify about criminal street gangs.” (*People v. Romero* (2006) 140 Cal.App.4th 15, 18.)

Substantial evidence demonstrates the shooting was committed in association with Mob Piru and for its benefit. White admitted he was a Mob Piru member, Jackson wore gang attire in rival gang territory on Mob Piru’s founding day and shouted, “What’s up, Blood,” just before the shooting, and Bernal opined that Jackson was a Mob Piru member. The jury could conclude from this evidence that two Mob Piru members carried out the shooting together, which is itself circumstantial evidence that each acted with the specific intent to assist gang members in the commission of the crime and promote the gang. Expert testimony that violent crime benefits a gang because it promotes respect suffices to establish the crime was committed to benefit the gang. (*People v. Olguin* (1994) 31 Cal.App.4th 1355, 1384-1385.)

Jackson argues no evidence other than Sergeant Bernal's opinion established that he is a gang member at all, and because he lives out of state, his membership in Mob Piru is improbable. He also argues no evidence established he knew of Mob Piru's criminal background. The points are irrelevant, as section 186.22 criminalizes neither gang membership nor gang knowledge, but participation in a crime to benefit a gang.

Jackson relies on several cases holding that mere possession of weapons or stolen vehicles by gang members in concert was insufficient to establish the possession offenses were gang related. (*People v. Ramon* (2009) 175 Cal.App.4th 843, 851; *In re Frank S.* (2006) 141 Cal.App.4th 1192, 1199; *People v. Killebrew* (2002) 103 Cal.App.4th 644, 652 [expert's testimony that "when one gang member . . . possesses a gun, every other gang member . . . constructively possess the gun" held to be insufficient]; *People v. Martinez* (2004) 116 Cal.App.4th 753, 757.) He also relies on two cases holding that the bare fact that a solo crime is committed by a gang member in rival gang territory does not establish the crime was committed to benefit the gang. (*People v. Albarran* (2007) 149 Cal.App.4th 214, 227; *Garcia v. Carey* (9th Cir. 2005) 395 F.3d 1099, 1103.) The cases are all materially distinguishable. In the illegal possession and solo crime cases, no evidence was offered of direct benefit to the respective gangs involved, and the crimes themselves conveyed no such benefit simply from the nature of their commission. That being so, the courts in those cases predictably held it was equally likely the crimes benefited only the individuals involved. Here, in contrast, the indiscriminate public shooting in association with an admitted Mob Piru member by its very nature broadcast to the community Mob Piru's penchant for extreme violence. That

Jackson knowingly participated in such a public gang crime gives rise to the reasonable inference that he intended its direct and natural consequence—that the community would fear the gang.

B. Motion to Bifurcate

Jackson argues the trial court abused its discretion when it denied his motion to bifurcate the gang allegation. We disagree.

Before trial, counsel for Jackson, joined by White’s counsel, requested that the court bifurcate the gang evidence from the rest of the trial because the main issue would be identification. The prosecution argued the gang evidence should not be bifurcated because it was intertwined with the facts of the case-in-chief, as it went to motive. The court found the defendants’ alleged gang affiliation provided a motive, which the prosecution would have to prove as part of its case-in-chief. It therefore denied Jackson’s request.

A trial court must limit the introduction of evidence and argument to relevant and material matters. (§ 1044.) To carry out its duties, the court has discretion to bifurcate trial issues, including enhancements, so as to avoid the risk of undue prejudice to the defendant. (*People v. Hernandez* (2004) 33 Cal.4th 1040, 1049.) “But evidence of gang membership is often relevant to, and admissible regarding, the charged offense. Evidence of the defendant’s gang affiliation—including evidence of the gang’s territory, membership, signs, symbols, beliefs and practices, criminal enterprises, rivalries, and the like—can help prove identity, motive, modus operandi, specific intent, means of applying force or fear, or other issues pertinent to guilt of the charged crime. [Citations.] To the extent the evidence supporting the gang enhancement would be admissible at a trial of guilt, any inference of prejudice would be dispelled, and

bifurcation would not be necessary.” (*Id.* at pp. 1049-1050.) Bifurcation is required only when the defendant can “clearly establish that there is a substantial danger of prejudice requiring that the charges be separately tried.” (*Id.* at p. 1050.) Denial of a motion to bifurcate gang allegations from trial on substantive offenses is reviewed for abuse of discretion. (*Id.* at p. 1040.)

Here, much of the gang evidence was relevant to the charged offense in that it helped the jury understand defendants’ motivation and permitted it to evaluate the credibility of witnesses. The trial court limited the jury’s use of the evidence by instructing the evidence could not be used to prove that defendants were “person[s] of bad character or that [they had] a disposition to commit crimes,” but only for the limited purpose of finding the special gang allegation true. And none of the evidence was likely to persuade the jury to convict Jackson on the charged crimes regardless of his guilt. Eyewitness testimony and circumstantial evidence showed that Jackson fired 18 shots at people in front of a residence from a vehicle driving by. The brief gang evidence was so mild in comparison that we cannot conclude it “rendered the trial “so ‘arbitrary and fundamentally unfair’ that it violated federal due process.” [Citation.]” (*People v. Albarran, supra*, 149 Cal.App.4th at p. 230.) We therefore conclude that the evidence admitted solely to prove the gang enhancement was not so minimally probative on the charged offense or so inflammatory “that it threatened to sway the jury to convict regardless of defendants’ actual guilt.” (*People v. Hernandez, supra*, 33 Cal.4th at p. 1051.) The trial court acted within its discretion in denying bifurcation.

C. Jackson's Request for a Trial Transcript

After his conviction, Jackson requested that the trial court order he be provided with trial transcripts to assist with his preparation of a motion for a new trial. When asked why he needed the transcripts, Jackson, who at this stage represented himself, stated, "I don't have a specific part of the trial where I want to get into. I'm not going into a fishing expedition to search for things. It's just certain content within the trial transcripts that I—I need to go through so I could properly prepare for my motion for new trial." The court denied the motion.

A trial court must provide a free transcript of prior proceedings to an indigent criminal defendant when necessary for an effective defense. (*People v. Hosner* (1975) 15 Cal.3d 60, 64-65.) When requesting a transcript to assist in the preparation of a motion for new trial, a defendant is not entitled to one as a matter of right, but must be provided a transcript where an effective motion cannot be prepared in its absence. (*People v. Lopez* (1969) 1 Cal.App.3d 78, 83.) "There are no mechanical tests for deciding when the denial of transcripts for a motion for new trial is so arbitrary as to violate due process or to constitute a denial of effective representation. Each case must be considered on its own peculiar facts and circumstances." (*People v. Bizieff* (1991) 226 Cal.App.3d 1689, 1700.) The court must consider the value and necessity of the transcript to the defendant in connection with the motion (*People v. Hosner, supra*, 15 Cal.3d at pp. 64-65) and may in its discretion deny a motion for a free transcript if the defendant fails to show a particularized need for it (*People v. Bizieff, supra*, 226 Cal.App.3d at p. 1702).

Here, Jackson made no particularized showing. When asked why he needed the transcript, he was unable to specify a

reason, but stated only that he needed “certain content within” it. Jackson’s appellate counsel speculates that a transcript would have been necessary for raising the issue of ineffective assistance of counsel in several specified respects. But Jackson himself made no such showing below. The court therefore acted within its discretion in denying the motion.

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

CHANNEY, Acting P. J.

We concur:

JOHNSON, J.

LUI, J.