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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. TRAVION MARQURSE WILLIAMS, Defendant and Appellant.	B285681 (Los Angeles County Super. Ct. No. NA104632)

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

Russell S. Babcock, 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, Scott A. Taryle and Christopher G. Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found Travion Marqurse Williams (Williams) guilty of second degree robbery (Pen. Code,[1] § 212.5, subd. (c); count 1) and shooting at an occupied motor vehicle (§ 246; count 2). In addition, the jury found gang (§§ 186.22, subd. (b)(1)(C), 186.22, subd. (b)(4)) and firearm allegations (§ 12022.53, subds. (c) & (e)(1)) asserted against Williams to be true. The trial court sentenced Williams to 35 years to life in state prison.

On appeal, Williams does not challenge the robbery conviction; in fact, he concedes that the People's case on that count was "airtight." Instead, he argues that his conviction on the shooting count should be reversed because there was insufficient evidence to establish that he shot at the victim's car. In addition, Williams contends that he received ineffective assistance of counsel because his trial lawyer failed to move to (a) sever his trial from that of his codefendant, Michael Allotey (Allotey), and/or (b) bifurcate the gang enhancement charges from the robbery and shooting counts.

We are unpersuaded by Williams's argument on the shooting conviction and hold that his ineffective assistance arguments are premature. Accordingly, we affirm the judgment without prejudice to any rights Williams may have to relief by way of a petition for writ of habeas corpus.

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

BACKGROUND

I. The Robbery

On June 17, 2016, at approximately 6:00 p.m., Williams and another man approached the victim as he was refueling his car at a gas station/convenience store. Williams and the other man asked the victim about his gang affiliation. When the victim told them he was not affiliated with any gang, Williams and the other man pressed the victim on the issue, asking the victim if he was a "monkey," a derogatory term for a member of the Sex, Money, Murder (SMM) street gang. After the victim denied being a member of the SMM gang, Williams and the other man lifted their shirts, displaying handguns in the waistbands of their pants, and then robbed the victim of his jewelry, bank card, and cash totaling approximately $2,500. Video surveillance cameras at the gas station/convenience store recorded the robbery.

II. The Shooting

After Williams and the other man robbed the victim, they got into a car that had been parked on the street next to the gas station and drove off. The victim followed the robbers in his car. The victim followed the robbers at high speed—60 to 70 miles per hour. As he gave chase, the victim never lost sight of the robbers' car.

After the chase had covered approximately a mile, the car in which Williams was riding came to a stop at an intersection, angled as though it was about to make a right-hand turn. The victim slammed on his brakes and came to a stop 50 to 75 feet behind the other car. The victim stopped his car, "because [he] already knew, you know, what was about to occur." Two to three

seconds after he braked his car to a stop, the victim saw Williams and another man exit the other car and "fire several rounds in his direction." When Williams and the other man opened fire, they were "in front" of the victim and the victim was "looking right at them." Although the victim was "not 100 percent sure" it was Williams who was firing at him, he "believe[d] it was [Williams]." Once Williams and the other man opened fire, the victim ducked down in his seat and reversed his car back into a cross street, and then drove away. Neither the victim nor his car were struck by the gunfire. At no point during the shooting did the victim get out of his car.

During their investigation at the scene of the shooting, the police found eight .45-caliber shell casings and four nine-millimeter shell casings. A criminalist later matched the nine-millimeter shell casings recovered at the scene to a gun confiscated from Williams when he was arrested. Although the victim's car was not struck by gunfire, police determined that a parked automobile, a Toyota truck, was struck in the front grill by a bullet; the truck was parked approximately 40 feet from the robbers' vehicle, between the robbers' vehicle and the victim's car.

III. The Trial[2]

At trial, the People relied, in principal part, on the testimony of the victim to meet its burden on the shooting charge. The victim's testimony at trial, however, proved less detailed than and, in some respects, contrary to the statements he gave to

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[2] In light of our holding, our summary of the trial is confined to a discussion of the evidence as it relates to the shooting offense.

the police immediately following the robbery/shooting and the testimony he gave at the defendants' preliminary hearings. For example, at trial, the victim testified that the robbers did not have guns in their waistbands, that he stopped his car 250 feet away from the robbers' vehicle not 50 to 75 feet away, and that he did not see anyone shooting at him or his car, that he only heard gunshots. As a result, the People also relied on the testimony of the officer who interviewed the victim immediately after the crimes, as well as on the victim's sworn testimony at the defendants' preliminary hearings.

Although the victim denied at trial being afraid of gang retaliation for his testimony against the defendants, that statement was belied by other statements made by the victim. For example, in August 2016, while he was in custody waiting to testify at Williams's preliminary hearing—the trial court issued a bench warrant in order to get the victim to testify—the victim complained to police officers in a taped interview that his life was at risk: "What about my safety? . . . [H]ow I'm going to be good when I leave here today. That's my main concern." Moreover, when the victim left the courtroom after testifying at trial, he told the People's gang expert, "Now they can't say that I said shit."

In addition to the victim, the People called a witness who, at the time of the shooting, lived in an apartment at the intersection where the robbers' vehicle had stopped. The witness testified that she went to her living room window after she heard seven to eight gun shots; when she looked out the window, she saw a man holding a gun at about shoulder height pointing it down the street in the direction of the victim's car.

In order to put the robbery and the shooting in a larger context and to support the gang enhancement allegations, the

People presented a police gang expert, who testified, among other things, that Williams had told him that he was a member of the Naughty Nasty Crip (NNC) street gang, that the NNC and SMM gangs were rivals, that the robbery occurred within an area disputed by the NNC and SMM gangs, and that the shooting occurred within NNC gang territory. The gang expert opined that both the robbery and the shooting would benefit the NNC gang and its reputation for intimidation and inducing fear.

Williams elected not to testify in his own defense. During closing arguments, his counsel told the jury to "find [Williams] guilty of robbery because you saw it on video." With regard to the shooting charge, Williams's counsel effectively told the jury that his client did, in fact, get out of the robbers' car and fire a gun during the shooting but did not aim it at the victim's car. Specifically, Williams's counsel told the jury to find his client "not guilty of shooting at an occupied vehicle," but guilty of the lesser included offense of "grossly negligent discharge of a firearm."

On September 21, 2017, the jury returned a verdict finding Williams guilty of robbery and shooting at an occupied vehicle. On October 11, 2017, the trial court sentenced Williams to 35 years to life in state prison. Williams timely appealed.

DISCUSSION

I. The Shooting Conviction Is Supported by Sufficient Evidence

On appeal, Williams argues that his conviction for shooting at an occupied vehicle should be reversed (and a conviction of the lesser included offense of grossly negligent discharge of a firearm

entered in its place[3]), because "the evidence at trial simply did not show any evidence that Mr. Williams had shot at the direction of [the victim's] car or any other occupied vehicle." As discussed below, we find Williams's argument without merit.

A. *Standard of Review*

We independently review the sufficiency of the evidence supporting a conviction. (*People v. Cole* (2004) 33 Cal.4th 1158, 1213.) "In reviewing a challenge to the sufficiency of the evidence under the due process clause of the Fourteenth Amendment to the United States Constitution and/or the due process clause of article I, section 15 of the California Constitution, we review the entire record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt." (*Id.* at p. 1212.) The federal constitutional standard for determining the sufficiency of evidence is "identical" to the standard under California law. (*People v. Staten* (2000) 24 Cal.4th 434, 460.)

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[3] See *People v. Ramirez* (2009) 45 Cal.4th 980, 985 [holding that the grossly negligent discharge of a firearm is a necessarily included offense of § 246]. Section 246.3, subdivision (a), describes the elements of discharging a firearm in a grossly negligent manner as: "(1) the defendant unlawfully discharged a firearm; (2) the defendant did so intentionally; (3) the defendant did so in a grossly negligent manner which could result in the injury or death of a person." (*People v. Alonzo* (1993) 13 Cal.App.4th 535, 538.)

"In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] 'Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]' [Citation.] A reversal for insufficient evidence 'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support" ' the jury's verdict." (*People v. Zamudio* (2008) 43 Cal.4th 327, 357; accord, *People v. Manibusan* (2013) 58 Cal.4th 40, 87.) We must accept logical inferences the jury might have drawn from the evidence even if we would have concluded otherwise. (*People v. Solomon* (2010) 49 Cal.4th 792, 811-812; see *People v. Brown* (2014) 59 Cal.4th 86, 105.) " '[U]nless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction.' " (*People v. Brown*, at p. 106.)

B. *Substantial Evidence Supported the Verdict*

Section 246, in pertinent part, provides as follows: "Any person who shall maliciously and willfully discharge a firearm at an . . . occupied motor vehicle . . . is guilty of a felony . . . ."

"[T]he term 'maliciously' in section 246 is defined by section 7, [subdivision] 4, as 'a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established

either by proof or presumption of law.' " (*People v. Watie* (2002) 100 Cal.App.4th 866, 879.) Courts have construed the term "malicious" not to require specific intent. (*People v. Atkins* (2001) 25 Cal.4th 76, 85.) "It is settled that a violation of section 246 is a general intent crime." (*People v. Hernandez* (2010) 181 Cal.App.4th 1494, 1500.) The only intent required is "the purpose or willingness to do the act." (*Ibid*.) Furthermore, "section 246 is not limited to the act of shooting directly 'at' an inhabited or occupied target. Rather, the act of shooting 'at' a proscribed target is also committed when the defendant shoots in such close proximity to the target that he shows a conscious indifference to the probable consequence that one or more bullets will strike the target or persons in or around it. The defendant's conscious indifference to the probability that a shooting will achieve a particular result is inferred from the nature and circumstances of his act." (*People v. Overman* (2005) 126 Cal.App.4th 1344, 1356-1357, fn. omitted.) In other words, "section 246 is *not* limited to shooting directly at a proscribed target. Nor does the statute require a specific intent to strike the target." (*Id*. at p. 1357.)

Here, there was substantial evidence that Williams maliciously and willfully fired a handgun at the victim while the victim was in his car. At Williams's preliminary hearing, which was held just two months after the shooting, the victim testified that Williams robbed him and that, after a high-speed chase, the car Williams rode in stopped abruptly at an intersection and two men exited, one of whom the victim believed with a high degree of certainty was Williams. The victim testified further that as soon as he saw the man he believed was Williams and the other shooter step from their vehicle, he "knew" what would happen

next. The victim told police immediately after the shooting that Williams and the other shooter fired multiple times "in his direction." The victim further testified at Williams's preliminary hearing that when Williams and the other man opened fire, they were "in front" of the victim and the victim was "looking right at them."

Physical evidence at the scene corroborated the victim's testimony—12 shell casings from two different handguns, one of which was later found in Williams's possession, and a bullet strike on a nearby parked car; further corroboration came from the witness who heard seven to eight gun shots from the street below her apartment and then saw a man pointing a gun down the street in the direction of the victim's car.

From those facts and from the testimony of the People's gang expert regarding the benefits that would flow to Williams's gang from such an act of violence committed in its territory, the jury, who had an opportunity to see and listen to the victim, could reasonably infer that when Williams pulled the trigger he was not aiming randomly but aiming at or in close proximity to the victim in his car—that is, Williams fired with a conscious indifference to the probable consequence that one or more bullets would strike the victim, the victim's car or persons around the victim's car. Accordingly, we affirm the conviction on the section 246 count.

II. Williams's Ineffectiveness of Counsel Arguments Are Premature

Williams argues that "[i]nflammatory gang evidence" regarding his codefendant, Allotey, was introduced at trial[4] and that, as a result of his trial counsel's failure to move to sever the defendants' trials or to bifurcate the trial of the gang enhancements from the primary charges, he received ineffective assistance from his counsel. As discussed below, we decline to resolve this dual-prong claim.

A. *Standard of Review*

To prevail on a claim of ineffective assistance of counsel, a defendant must establish his attorney's representation fell below professional standards of reasonableness and must affirmatively establish prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 687 [104 S.Ct. 2052, 80 L.Ed.2d 674]; *People v. Hart* (1999) 20 Cal.4th 546, 623-624.) If the defendant's showing is insufficient as to one component of this claim, we need not address the other. (*Strickland*, at p. 697.)

However, "[a] claim on appeal of ineffective assistance of counsel must be rejected ' "[if] the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged[,] . . . unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation." ' [Citations.] Unless the record affirmatively discloses that counsel had no tactical purpose for his act or

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[4] This evidence included, among other things, a YouTube music video by Allotey, a self-described up-and-coming rapper, which included arguably threatening lyrics such as "I'm comin' for your life" and "this bullet's got your name."

omission, 'the conviction will be affirmed and the defendant relegated to habeas corpus proceedings at which evidence dehors the record may be taken to determine the basis, if any, for counsel's conduct or omission.' [Citation.]" (*People v. Hinds* (2003) 108 Cal.App.4th 897, 901.)

As our Supreme Court observed in *People v. Mendoza Tello* (1997) 15 Cal.4th 264, "[b]ecause claims of ineffective assistance are often more appropriately litigated in a habeas corpus proceeding, the rules generally prohibiting raising an issue on habeas corpus that was, or could have been, raised on appeal [citations] would not bar an ineffective assistance claim on habeas corpus." (*Id.* at p. 267.) In *Mendoza Tello*, the Supreme Court unanimously reversed the Court of Appeal's reversal of the defendant's conviction on the grounds that counsel was ineffective for failing to make a suppression motion; the court did so due to gaps in the record: "On this record, we do not know what [the deputy] would have said had he been asked at a suppression hearing why he did what he did. . . . [P]erhaps he did have a reason, of which defense counsel was aware, and which justified counsel's actions. Perhaps there was some other reason not to suppress the evidence." (*Ibid.*) "No one gave [the deputy] the opportunity to point to any specific and articulable facts justifying his actions. Nor did the prosecution have the opportunity to offer some other possible reason not to suppress the evidence." (*Ibid.*)

The lesson from *People v. Mendoza Tello*, *supra*, 15 Cal.4th 264, is that an appellate court should not reverse "unless it can be truly confident *all* the relevant facts have been developed." (*Id.* at p. 267, italics added.) Or, as the court in *People v. Hinds*, *supra*, 108 Cal.App.4th 897 put it, "[w]e are wary of adjudicating

claims casting aspersions on counsel when counsel is not in a position to defend his conduct. A claim of ineffective assistance of counsel instead is more appropriately made in a habeas corpus proceeding." (*Id.* at p. 902.)

B. *The Record Is Too Undeveloped To Support Direct Appellate Review of the Ineffective Assistance Claims*

Here, we decline to resolve Williams's ineffectiveness of counsel claims because the record does not "affirmatively disclose[ ]" that Williams's counsel had no tactical purpose for his allege omissions. (*People v. Hinds*, *supra*, 108 Cal.App.4th at p. 901.)

Williams argues that "[b]y failing to either move to sever or request empanelment of separate juries, Mr. Williams' constitutional rights to due process and a fair trial . . . were violated." The People, however, have advanced a number of potentially meritorious arguments why Williams's counsel decided not to move to sever codefendant Allotey's trial and bifurcate the gang enhancements from the primary charges. For example, the People note that defense counsel could have reasonably concluded that both motions would have been futile in light of the facts and prevailing case law.

What is missing from the record before us is direct evidence about the strategic and tactical decisions made by Williams's counsel. The record before us, as the People observe, is "silent" with respect to the decision-making by Williams's trial counsel on both the decision not to move to sever Williams' s trial from that of his codefendant and the decision not to move to bifurcate the gang enhancement allegations from the robbery and shooting charges. "Action taken or not taken by counsel at a trial is

typically motivated by considerations not reflected in the record. It is for this reason that writ review of claims of ineffective assistance of counsel is the preferred review procedure. Evidence of the reasons for counsel's tactics, and evidence of the standard of legal practice in the community as to a specific tactic, can be presented by declarations or other evidence filed with the writ petition." (*In re Arturo A.* (1992) 8 Cal.App.4th 229, 243.)

Accordingly, we affirm the judgment "without prejudice to any rights [Williams] may have to relief by way of a petition for writ of habeas corpus" addressing his two ineffective assistance of counsel claims. (*People v. Garrido* (2005) 127 Cal.App.4th 359, 367.)

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED

JOHNSON, Acting P. J.

We concur:

BENDIX, J. CURREY, J.*

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