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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. LAVONTAHE D. BROWN, Defendant and Appellant.	B234701 (Los Angeles County Super. Ct. No. BA377680)

APPEAL from a judgment of the Superior Court of Los Angeles County. Bob S. Bowers, Jr., Judge. Affirmed as modified.

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Juliana Drous, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Mary Sanchez and Jonathan M. Krauss, Deputy Attorneys General, for Plaintiff and Respondent.

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An information, dated January 25, 2011, charged Lavontahe D. Brown, with four counts of willful, deliberate and premeditated attempted murder (Pen. Code, §§ 664, subd. (a), 187, subd. (a)).[1] The information specially alleged that, in committing the offenses, Brown personally and intentionally discharged a firearm and proximately caused great bodily injury to the victims (§ 12022.53, subds. (b)-(d)). It also specially alleged that Brown committed the offenses for the benefit of, at the direction of, or in association with a criminal street gang, with the specific intent to promote, further, or assist in a criminal conduct by gang members (§ 186.22, subd. (b)(1)). The jury convicted Brown on all four counts and found true the special firearm use and gang allegations. The trial court sentenced Brown to 160 years to life in state prison, consisting of consecutive terms of 15 years to life (§ 664, subd. (a), 186.22, subd. (b)(5)), plus 25 years to life (§ 12022.53, subd. (d)), for each of the four counts.

Brown contends that substantial evidence does not support the jury's finding that the attempted murders were willful, deliberate and premeditated and that his sentence of 160 years to life is constitutionally excessive. We disagree. The People contend the trial court should have imposed and stayed the additional firearm use enhancements under section 12022.53, subdivisions (b) and (c). We agree. We thus modify the judgment to reflect that the section 12022.53, subdivisions (b) and (c), firearm use enhancements are imposed and stayed and, as modified, affirm the judgment.

DISCUSSION

1. *Substantial Evidence Supports the Jury's Finding That the Attempted Murders Were Willful, Deliberate and Premeditated*

"'[A]ttempted murder requires the specific intent to kill and the commission of a direct but ineffectual act toward accomplishing the intended killing.' [Citations.]" (*People v. Smith* (2005) 37 Cal.4th 733, 739.) An attempted murder is premeditated and deliberate when it occurs "as the result of preexisting thought and reflection rather than unconsidered or rash impulse. [Citations.]" (*People v. Stitely* (2005) 35 Cal.4th

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[1] Statutory references are to the Penal Code.

514, 543.) "'Deliberation'" refers to "careful weighing of considerations in forming a course of action" and "'premeditation' means thought over in advance. [Citations.]" (*People v. Koontz* (2002) 27 Cal.4th 1041, 1080.) "Premeditation and deliberation do not require an extended period of time, merely an opportunity for reflection. [Citations.]" (*People v. Cook* (2006) 39 Cal.4th 566, 603.) "'The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly . . . .' [Citations.]" (*People v. Mayfield* (1997) 14 Cal.4th 668, 767.)

The Supreme Court has "distilled certain guidelines to aid reviewing courts in analyzing the sufficiency of the evidence to sustain findings of premeditation and deliberation": "(1) planning activity, (2) motive, and (3) manner of killing." (*People v. Perez* (1992) 2 Cal.4th 1117, 1125.) These factors, "while helpful for purposes of review, are not a sine qua non to finding first degree premeditated murder [or attempted murder], nor are they exclusive." (*Ibid*.)

"Review on appeal of the sufficiency of the evidence supporting the finding of premeditated and deliberate murder [or attempted murder] involves consideration of the evidence presented and all logical inferences from that evidence . . . ." (*People v. Perez*, *supra*, 2 Cal.4th at p. 1124.) "'[I]t is the jury, not the appellate court which must be convinced of the defendant's guilt beyond a reasonable doubt. If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.' [Citations.]" (*Ibid*.)

In this case, on the night of Halloween 2010 a crowd congregated on Hollywood Boulevard for an event entitled "Hollywood Halloween." An extra 300 police officers were deployed to the area "to manage the crowds and partygoers or revelers for Halloween." About 1:00 a.m., a shooting occurred at a nightclub on Hollywood Boulevard near Cahuenga Boulevard. Officers set up a crime scene to investigate the shooting, and approximately 20 to 30 officers were in the area as part of the investigation.

About 3:00 a.m., a group of African Americans, including members of the "Blood" gang "Inglewood Family," were walking on Hollywood Boulevard across the street from the nightclub where the earlier shooting had occurred. Another group of African Americans, including Brown, a member of the "Crips" gang "Mad Ass Gangster Crips," approached, and someone in the "Mad Ass Gangster Crips" group called out "'[w]here you from'" to the "Inglewood Family" group. That group considered the words as a challenge from a rival gang. A police lieutenant supervising the shooting investigation across the street witnessed the groups yelling, pushing and shoving and possibly someone throwing a punch. The lieutenant "shined [his] flashlight across the street, illuminated both groups, and . . . yelled across the street as loud as [he] could, hey, break it up." "Both groups separated and walked two different directions away from each other. [The lieutenant] believed the problem had solved itself." The lieutenant then "turned [his] focus back to the crime scene. And about 10 seconds later, [he] heard shouting again from the [other] side of Hollywood Boulevard. [He] looked back across the street, and [he] saw one of the men that [he] had shined the flashlight on walking quickly back towards the other group. [The lieutenant] saw that man raise his arm. [The lieutenant] heard a gunshot and then several more gunshots, and [he] saw a victim hit the ground." The shooter, identified as Brown by the lieutenant and other officers on the scene, stood five to six feet from the victim who the lieutenant saw fall to the ground. Four people from the rival group, three of whom were members of the Inglewood Family gang, suffered gunshot wounds.

After firing shots, Brown walked toward his own group. He then ran down Hollywood Boulevard, turned the corner onto a small, dark street, fell to the ground and was apprehended. As Brown fell, "a chrome pistol hit the concrete in front of him . . . ." Later testing revealed gunshot residue on both of Brown's hands. Testing also determined that shell casings found at the scene of the shooting and bullets removed from the bodies of two of the victims had been fired from the gun recovered from the street where Brown had fallen.

This evidence is sufficient to support the jury's finding that the attempted murders were willful, deliberate and premeditated. Brown, an admitted gang member, carried a loaded gun with him while walking along Hollywood Boulevard in the early morning hours after Halloween, demonstrating he contemplated the possibility of violence. (See *People v. Lee* (2011) 51 Cal.4th 620, 636 [defendant's act of bringing a loaded handgun with him on the night of the murder indicates he "considered the possibility of a violent encounter"]; *People v. Steele* (2002) 27 Cal.4th 1230, 1250 [defendant's act of carrying fatal knife into victim's home "makes it 'reasonable to infer that he considered the possibility of homicide from the outset'"].) Brown also had time to reflect on his actions. At first he walked away from the rival group, but he then turned around and, when he was within five to six feet of his first victim, began shooting. His shots were not random, but aimed directly at the group, including rival gang members, with whom he had just fought. As the lieutenant explained, "I saw [Brown] raise an arm, and I don't remember which arm, but I saw him raise an arm, point it directly at that group and directly at the guy who went down, and [Brown] fired five to six gunshots." Given Brown's acts in carrying a loaded gun, fighting with a group including rival gang members, returning to the rival group after having time to reflect and directly firing multiple shots at close range, the planning, motive and manner of shooting show the preexisting thought and reflection necessary for willful, deliberate and premeditated attempted murder.[2]

2. *Brown's Sentence Is Not Constitutionally Excessive*

Brown contends that his sentence is constitutionally excessive because it in effect is a sentence of life without the possibility of parole. According to Brown, the United States Supreme Court's prohibition on sentences of life without the possibility of parole

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[2] Brown's contention that the evidence demonstrates the shootings were "rash and impulsive" does not require a different result. We cannot reweigh the evidence. Because the evidence is sufficient to support the jury's conclusion, we may not substitute the contrary conclusion advanced by Brown for that of the jury.

for juvenile offenders should apply to him because he was only 18 years old when he committed the offenses.

Given current mortality expectations, Brown's sentence likely will result in his being imprisoned for the remainder of his life. Although the sentence may seem harsh, we are not free to change the current age standards. "The age of 18 is the point where society draws the line for many purposes between childhood and adulthood" (*Roper v. Simmons* (2005) 543 U.S. 551, 574), including who may be sentenced to life without the possibility of parole (*Graham v. Florida* (2011) 130 S.Ct. 2011, 2021-2034). As a result, Brown's age at the time of the offenses does not make his sentence constitutionally excessive.

3. *The Additional Firearm Use Enhancements Must Be Imposed and Stayed*

In sentencing Brown, the trial court "ordered stricken" the additional firearm use enhancements under section 12022.53, subdivisions (b) and (c). The additional firearm use enhancements, however, should have been imposed and stayed. (*People v. Gonzalez* (2008) 43 Cal.4th 1118, 1129-1130.) Accordingly, we modify the judgment to reflect that the additional enhancements under section 12022.53, subdivisions (b) and (c), are imposed and stayed.[3]

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[3] The sentencing minute order and the abstract of judgment correctly identify the additional firearm use enhancements under section 12022.53, subdivisions (b) and (c), as stayed. We modify the judgment, however, because the trial court's oral pronouncement of sentence controls. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.)

DISPOSITION

The judgment is modified to reflect that the additional firearm use enhancements under section 12022.53, subdivisions (b) and (c), are imposed and stayed. As modified, the judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

CHANEY, J.