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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.

DAVID A. ADAMS, JR., et al.,

Defendants and Appellants.

B269551

(Los Angeles County
Super. Ct. No. KA103213)

APPEAL from a judgment of the Superior Court of
Los Angeles, George Genesta, Judge. Affirmed and remanded.

Patricia A. Scott, under appointment by the Court of Appeal,
for Defendant and Appellant David A. Adams, Jr.

Jennifer Peabody, under appointment by the Court of Appeal,
for Defendant and Appellant Nicholas Hempstead.

Xavier Becerra, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Paul M. Roadarmel, Jr., Shawn McGahey Webb,
and Stephanie A. Miyoshi, Deputy Attorney General, for Plaintiff
and Respondent.

David Anthony Adams, Jr., and Nicholas Hempstead, convicted of the murder of Deon Davis, contend on appeal that two witnesses who testified against them were accomplices and that insufficient evidence corroborates their testimony. We disagree and affirm. We remand, however, for the limited purpose of allowing Adams and Hempstead the opportunity to make and preserve a record in preparation for eventual youth offender parole hearings.

BACKGROUND

A jury convicted Adams of second degree murder (Pen. Code, §§ 187, subd. (a), 189)¹, found true a gang allegation (§ 186.22, subd. (b)(4)), and found not true an allegation that a principal intentionally discharged a firearm, proximately causing death (§ 12022.52, subds. (d) & (e)(1)). The same jury convicted Hempstead of first degree murder (§§ 187, subd. (a), 189), and found true a gang allegation (§ 186.22, subd. (b)(4)), and allegations that a principal intentionally discharged a firearm causing death (§ 12022.53, subds. (d) & (e)(1)), and that Hempstead personally and intentionally discharged a firearm, proximately causing death (§ 12022.53, subd. (d)).

The trial court found that Adams had one prior strike conviction (§§ 667, subds. (b)-(j), 1170.12, 667, subd. (a)(1), 667.5, subd. (b)) and sentenced him to state prison for a total of 36 years to life. The trial court sentenced Hempstead to state prison for 50 years to life.

Adams and Hempstead filed timely notices of appeal.

¹ Unless otherwise noted, further statutory references are to the Penal Code.

STATEMENT OF FACTS

Adams and Hempstead were members of Trey-57, a Crips gang. Lisa Caesar and Lonzo Eddings were friends of, or related to, Trey-57 gang members. The victim, Deon Davis, was a member of PDL, a rival Bloods-affiliated gang.² PDL may have been responsible for the shooting death of Eddings's brother, Joseph Cook, in the driveway of Adams's home. Caesar and Eddings were granted immunity, and testified on behalf of the prosecution.

Alize Crim³ is Lisa Caesar's niece. On August 31, 2013, Alize called Caesar in a panic and told Caesar that her boyfriend, Davis, "had put his hands on her, forced her to smoke crystal meth and left her on Holt [Avenue] to make some money in prostitution." Apparently Davis had taken Alize's car and Caesar called Eddings for help to retrieve it.

When Caesar arrived at Eddings's residence, Adams and Hempstead were there. The home was a meeting place for Trey-57 gang members in Valwood Estates, an area claimed by Trey-57 and known to gang members as Sintown.⁴

Caesar told Eddings that she needed help in getting Alize's car back from Davis. Eddings, Adams, and Hempstead got into Caesar's car and picked up Alize, who was waiting in a taco stand parking lot. Alize's face was swollen and red and she was dressed

² Both gangs are primarily African-American.

³ Two witnesses share the same last name Crim. To avoid confusion, we will refer to them by their first names, Alize and Reginald. We mean no disrespect.

⁴ Eddings became a friend of Hempstead between the fifth and sixth grades and became a friend of Adams in the seventh grade. Eddings knew that both Adams and Hempstead were Trey-57 members.

as though ready to engage in prostitution. Alize recognized Hempstead and Eddings as Caesar's friends; she did not know Adams.

Alize got into Caesar's car. She was crying, and either Adams or Hempstead said, " 'Man, that's fucked up.' " Caesar dropped off Eddings, Adams, and Hempstead at Eddings's home, then dropped off Alize at her home and returned to Eddings's home.

Alize called Caesar and told her that Davis might be at the home of Reginald Crim, who is Caesar's half-brother and Alize's father. Caesar, Eddings, Adams, and Hempstead then drove to Reginald's home to look for Alize's car.

There they found the car parked in front of Reginald's residence. Davis was standing alone outside the house. Someone in Caesar's car asked her, "[D]id you want us to get out with you?" Caesar answered, "No, it's okay," but about 30 seconds later all three youths got out of the car and stood behind Caesar.

Eddings testified that at that point in time he thought that Davis and Caesar intended to fight each other. Caesar told Davis, " 'After this, I don't want you around my niece.' " Davis said, " 'It's nothing. It's nothing. It's nothing over a bitch.' "

Caesar's testimony differed. She denied saying anything to Davis about her niece, but testified that she asked Davis, in a firm tone of voice, for the keys to Alize's car. When she saw the expression on Davis's face, she turned around to see Eddings, Adams, and Hempstead, who soon exchanged "fighting words" with Davis. Davis "started lifting up his pants and was telling them we can . . . go ahead and fight." He posed in a "fighting stance" and said, " 'Let's take this inside.' "

Davis "started claiming on Bloods," and said, "Bloods" and "PDL." Eddings told Davis to calm down, because Adams and Hempstead, two Crips-affiliated Trey-57 gang members, were behind Eddings. Eddings knew that when a member of a gang

“claimed” his own gang to members of a rival gang “it’s going to get physical.” Eddings heard Adams say, “This is Crips. This is Trey-57.” Hempstead said, “Fuck PDL.”

Caesar walked into the house, followed by Davis and the others. As Davis walked into the house, he turned to the others and said, “I’m not no bitch,” and “I know people.” Davis, who had a clearly-visible tattoo of a “P,” also said, “Bloods,” which he followed by saying, “PDL” and “Devil Lanes,” the names of a Pasadena gang associated with Bloods. Someone behind Caesar answered, “Sintown.”

According to Caesar, Adams punched Davis in the face with a closed fist. Davis fell to the floor. Adams kicked Davis after he was down. Caesar testified that she raised Davis up from the floor, intending to “get him away” from the others. She placed herself between Davis and the three youths and backed Davis up against the television. She spoke to him “one-on-one,” and said, “I didn’t come here for this. I just came for the keys.”

Eddings testified that he held Adams and Hempstead back, while Caesar helped Davis up from the floor. When Davis got up, he continued his verbal tirade.

Caesar testified that as Davis gave her the keys to Alize’s car his focus was on the three youths, who continued to “talk crap” to him. Caesar told Davis, “That’s it. I’m going to go and drop you off.”

Reginald testified that he was in the garage doing laundry when his wife, Alicia Reagor, asked him to tell the arguing group to leave. Once inside the house, Reginald recognized Davis, Eddings, Adams, and Hempstead. Reginald saw Adams punch Davis and heard Adams say, “Trey 57.” Davis “jumped right back up” without any assistance. Caesar did not help Davis up, nor did Eddings try to block anyone from reaching Davis. Reginald saw that Hempstead was wearing gloves.

Eddings testified that he had expected Davis to calm down, but Davis “kept going on. They kept going on . . . gang banging and talking, and somehow it got to the point to where he was tested to go catch a fade on the set [engage in a one-on-one fight]. So, you know, he was willing to go.”

Reginald ordered the group out of his house. Reagor, Reginald’s wife, testified that the group left together.

Adams suggested that the fight continue in Sintown. Eddings thought that the fight would be between Caesar and Davis.

All five people got into Caesar’s car—Caesar drove; Eddings was in the front passenger seat, with Davis in the back seat, between Adams and Hempstead. Davis voluntarily entered the car. Davis kept talking about a rematch, until Adams told him to “shut up.” The other passengers remained silent.

Caesar testified, at that point, she believed the physical fighting was over. She also testified that she did not know that anyone was armed.

Eddings told Caesar that he did not want Davis to know where Eddings lived. After they drove past Eddings’s house, someone suggested a fight in front of his house. Eddings responded, “Hell no,” and Caesar continued to drive.

Eddings told her to stop the car “and we were at the alley.” The “alley” is actually a pathway to a school site. Although the gate to the alley was welded shut, Eddings and his friends easily vaulted the gate to get to the school.

Caesar and her passengers got out of the car. Caesar testified that as Davis began to walk away he turned and “challenged the guys . . . to a rematch,” saying that he wanted to “catch a fade.” Adams replied, “ ‘We can catch that,’ ” meaning that Adams accepted the fight challenge. They walked toward each other and then to the alley with Davis in the lead, Adams and Hempstead

behind Davis, and Eddings and Caesar at the rear. Caesar did not enter the alley.

Eddings testified to a different walking order—Caesar and Eddings followed Davis, with Adams and Hempstead behind them. Eddings also testified that as Davis started walking away Hempstead whispered to Adams about wanting to do something to Davis. Adams then called out to Davis, “‘Where you going? The alley right here.’” Davis turned to go into the alley, saying, “‘I know. I just don’t want you all to do no weird shit.’”

Caesar testified that, when the youths stopped in the alley, they conversed in tones so low that Caesar could not hear them. Eddings came out of the alley and told her, “‘Nick [Hempstead] is going to shoot him.’” Caesar told Eddings, “‘I didn’t come here for that’” and “tell him no.” Eddings returned to the alley, and, in a few seconds, Caesar heard Hempstead say, “‘Fuck that. I got him right here.’” Caesar saw that Hempstead was wearing gloves and had a black object that was the size of a handgun. Hempstead shoved Adams aside and walked toward Davis, who was deeper into the alley. Eddings began to walk out of the alley.

Eddings testified that he had a “weird feeling” and told Caesar, “Nick is about to do some weird shit,” and the two froze, looking at each other. Caesar said nothing; she did not direct him to tell the others not to shoot Davis. Adams walked up to them and said, “‘Start running to the car.’” Both Caesar and he began to run to the car. As they ran, Eddings heard multiple gunshots.

No more than two hours after the group left Reginald’s house, Miguel Arellano, who lived near the alley, heard gunshots and saw two or three people, who appeared to be Black men, run to a car.

Caesar testified that after Eddings told her that he thought Hempstead would shoot Davis, she “turned around and left.” As she crossed the street to her car, she heard several gunshots that came from the alley. She got into her car and “never looked back.”

“Within seconds” Eddings got into the car; then Adams arrived five seconds after Caesar. Caesar did not intend to wait for Adams or Hempstead. After Caesar started the car, but before she could put the car in gear, Hempstead got into the car. During the ride, Eddings asked, “ ‘Are we good? We’re all good, right?’ ”

Eddings testified that he and Caesar reached the car about the same time and Caesar did not start the car until both Adams and Hempstead were inside. As they were driving away, Eddings looked at Hempstead and said, “What the fuck did you do?” Hempstead answered, “ ‘That was for [Cook].’ ” Adams and Hempstead laughed and made Crips hand signals.

Caesar was afraid that if she told Adams and Hempstead to get out of her car, she would have been killed. She then drove the two blocks to Eddings’s residence and dropped off the three youths. She stopped on her way home at a little market for a “regular drink.” After she got home, Caesar, who looked sad, did not tell Alize that Davis was dead. She simply told her, “ ‘You don’t have to worry about Deon [Davis].’ And, ‘Nick [Hempstead] shot him.’ And everything was just said honestly in that state of shock of what just happened.”

Eddings testified that when Caesar dropped the three youths off at Eddings’s house, Eddings ran into his room alone. Later that day, however, Eddings got together with Adams and Hempstead to “smoke some . . . weed.” He testified that he did not remember telling the officer that when his girlfriend texted him that “they found the dude,” Eddings texted in return, “Ha, ha, ha, ha.”

Caesar did not notify the police, because “[t]hat’s the worst thing you can do. So I was just scared.” She believed that if she spoke to the police, she would be killed. Caesar subsequently decided to speak to the police because it “was . . . just doing the right thing.”

After Caesar spoke with officers, a female, whom Caesar had seen at Eddings's home, threatened Caesar during a telephone call, telling her that "they know where you go to school." That same female continued to call, but Caesar did not answer those calls. Caesar did not return to school thereafter. She also lost contact with Alize, who "went through a stage of depression," and went to live with her mother, instead of Caesar's family.

Caesar knew that Eddings's brother, Cook, had been a member of Trey-57, and Eddings was an "associate" of the same gang. She also knew that Cook had been killed by a gunshot.

Eddings testified that Cook, his brother, was "most definitely" a Trey-57 gang member, and the family home was a meeting place for Trey-57 members. Cook was shot on two separate occasions, both times at Adams's house. Eddings believed that PDL members were responsible for the first shooting, but he did not know who shot Cook the second, fatal time.

When police officers first approached Eddings, he refused to cooperate because he feared for himself and his family. Officers arrested Eddings for Davis's murder. After he was in jail for two or three days, Eddings spoke to Officer Andrew Bebon; Eddings did not remember what he told the officer. On cross-examination, Eddings stated that he did not remember asking Officer Bebon, "What do I do to get myself out of this situation?"

Eddings decided that he would tell the truth to the officers because, when his brother was killed, "nobody stepped up to the plate." After talking with the police, Eddings knew he could never live in his neighborhood again. He has moved away.

Officer Richard Machado testified that on September 19, 2013, about three weeks after Davis's murder, he executed a search warrant on Adams's residence; he recovered spent shell casings just outside it. Officers also discovered 9mm ammunition at the home of Hempstead's grandmother, where Hempstead often slept.

The casings from Adams's residence matched the seven casings found at the murder scene. Having used a comparison microscope to examine the bullet casings found at the two different locations, the People's expert opined that all the casings came from the same 9mm firearm. The bullet casings found at Adams's home had "a little bit" of oxidation, but the oxidation did not indicate how long the bullet casings had been exposed to the elements.

The People's expert Greg Freeman testified that the "big rival" of Trey-57 in 2013 was PDL, the gang to which Davis belonged.

Freeman further testified that about three weeks before trial he photographed Hempstead's tattoos. The numerous tattoos on his wrist, hand, and face signified Hempstead's Trey-57 gang membership. Freeman noted that Hempstead did not have his Trey-57 face tattoos at the preliminary hearing and most likely was tattooed in jail by another inmate. These tattoos serve as a "badge of honor" for gang members who kill rivals.

DISCUSSION

This case turns on two questions: Does the evidence establish conclusively that Caesar and Eddings were accomplices in the murder of Davis? If so, was their testimony corroborated? We conclude that the answer to the second question is yes, and so we need not decide the first question.

Section 1111 provides: "A conviction can not be had upon the testimony of an accomplice unless it be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof. [¶] An accomplice is hereby defined as one who is liable to prosecution for the identical offense charged against the defendant

on trial in the cause in which the testimony of the accomplice is given.” Because accomplice testimony poses reliability questions, it is insufficient by itself to support a conviction. (*People v. Romero and Self* (2015) 62 Cal.4th 1, 32.)

Adams and Hempstead contend that Caesar and Eddings aided and abetted them in their confrontation with Davis, and that the shooting was a natural and probable consequence of the initial fight. Consequently, they argue that Caesar and Eddings were accomplices in the murder of Davis as a matter of law, and that the trial court erred by failing to instruct the jury accordingly. We need not decide this issue because we conclude that there was sufficient corroboration of their testimony

To corroborate an accomplice’s testimony, evidence need only “‘tend[] to connect the defendant with the commission of the crime.’” (*People v. Abilez* (2007) 41 Cal.4th 472, 505.) “‘The trier of fact’s determination on the issue of corroboration is binding on the reviewing court unless the corroborating evidence should not have been admitted or does not reasonably tend to connect the defendant with the commission of the crime.’” (*Ibid.*) “‘“The corroborating evidence may be circumstantial or slight and entitled to little consideration when standing alone, and it must tend to implicate the defendant by relating to an act that is an element of the crime. The corroborating evidence need not by itself establish every element of the crime, but it must, without aid from the accomplice’s testimony, tend to connect the defendant with the crime.”’ [Citation.] ‘The evidence is “sufficient if it tends to connect the defendant with the crime in such a way as to satisfy the jury that the accomplice is telling the truth.” ’” (*People v. Williams* (2013) 56 Cal.4th 630, 678–679.)

We agree that the most inculpatory testimony came from Caesar and Eddings, who—for the sake of argument—we assume, were accomplices to the murder. Although the details of Caesar’s

and Eddings's testimony differed in broad outlines, they told the same story. Caesar and Eddings testified that they, along with Adams and Hempstead, tracked down Davis to retrieve Alize's car. They confronted Davis, and Adams punched him. All five people got into Caesar's car and traveled to an alley or pathway where they left the car in order to continue the fight. Hempstead shot Davis in the alley, and Hempstead and the others then ran back to the car and drove away.

Although such testimony from accomplices would not support the convictions unless corroborated by other credible evidence that connected the defendants to the crime, here there was such corroboration. Non-accomplice testimony helped establish that gang retaliation was at least one motive for the killing. A Pomona police detective testified that Adams and Hempstead were both members of the Trey-57 gang, which was an enemy of Davis's PDL gang. Indeed, Reginald testified that during the confrontation at his house, Adams punched Davis and shouted out his gang affiliation, Trey-57. A further motive might have been revenge for Davis's mistreatment of Alize. She testified that when Caesar came to pick her up, Hempstead and two other men were in the car with Caesar. At the time, Alize was dressed like a prostitute, was upset and crying, and told Caesar that Davis had her car.

Witnesses, other than Caesar and Eddings, testified about the fight that precipitated the murder, as well as the immediate aftermath of the killing. Reginald testified that he witnessed the fight at his home, including that he saw Adams punch Davis and yell, "Trey-57." Reginald's wife Reagor heard the commotion of the fight, asked her husband to ask the participants to leave because of the shouting, and saw them leave the house together. Not more than two hours later, Arellano heard shots fired from the alley where the murder occurred and saw two or three Black men running to a car.

Finally, two additional pieces of evidence strongly tied Adams and Hempstead personally to the crime. First, after he was jailed for the murder, Hempstead obtained a gang-related tattoo on his face. According to a prosecution expert, these tattoos serve as a “badge of honor” for gang members who kill rivals. Second, in Adams’s case, the spent shell casings that Officer Machado recovered tie him to the killing. The officer discovered the casings, which came from the same 9mm firearm used to shoot Davis, just outside Adams’s residence.

Citing *People v. Robinson* (1964) 61 Cal.2d 373, 397-398 (*Robinson*), Adams contends that the shell casing evidence cannot be considered as corroboration that he participated in the murder because there was an innocent explanation for their presence outside his home. We disagree.

In *Robinson*, our Supreme Court held that the presence of a defendant’s fingerprints on a car linked to a murder was insufficient to corroborate an accomplice’s testimony against the defendant. The court noted that the fingerprints “are as equally susceptible to an inference that they came there innocently, as they are to any inference that their presence connects defendant with the commission of the crime.” (*Robinson, supra*, 61 Cal.2d at p. 398.) Adams asserts that by the same reasoning, the presence of bullet casings near his home was subject to an innocent explanation—that the gun that killed Davis was fired near Adams’s family home at some unknown time. We are not persuaded. The court in *Robinson* noted that the defendant was an acquaintance of the car’s owner and told police that he had ridden in it earlier on the night of the murder. (*Id.* at pp. 398-399.) There is no evidence in the record to support a similar innocent explanation for the presence of shell casings near Adams’s home. Without evidence linking anyone else in the area to the gun, the fact that bullet

casings came from the very gun used to shoot Davis were discovered outside Adams's home tends to link Adams personally to the crime.

**Right to a hearing pursuant to *People v. Franklin*
(2016) 63 Cal.4th 261**

The People agree with Hempstead's contention that, because he had just turned 20 years old when he committed the murder, he will be entitled to a youthful offender parole hearing during the 25th year of his sentence and is entitled to a limited remand to provide information relevant for that eventual hearing. (§§ 3051, 4801, subd. (c); *People v. Franklin* (2016) 63 Cal.4th 261, 269 (*Franklin*).) Although Adams does not expressly join in this issue, the People assert that the matter should also be remanded to give Adams the same opportunity.

Adams and Hempstead were sentenced on January 13, 2016, before the California Supreme Court issued its opinion in *Franklin*. Counsel did not provide, and the record does not show, any information that might be relevant at a youth offender parole hearing. Because the record indicates that neither Adams nor Hempstead had the opportunity to place evidence on the record relevant to an eventual youth offender parole hearing, they should have the opportunity to do so upon remand.

DISPOSITION

The judgments are affirmed.

The matter is remanded for the limited purpose of the trial court's conducting hearings, pursuant to *People v. Franklin* (2016) 63 Cal.4th 261, and this opinion, to allow the parties an adequate opportunity to make a record of information that will be relevant to the Board of Parole Hearings as it fulfills its statutory obligations under sections 3051 and 4801 to Adams and Hempstead.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.