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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

THE PEOPLE, Plaintiff and Respondent, v. ALFREDO TORRES, Defendant and Appellant.	B266892 (Los Angeles County Super. Ct. No. LA079163)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joseph A. Brandolino, Judge. Affirmed and remanded.

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

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Jaime L. Fuster and Joseph P. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Alfredo Torres of a first degree murder that occurred during a planned armed robbery. (Count 1; Pen. Code, § 187, subd. (a).)[1] Further, the jury convicted Torres of conspiracy to commit robbery. (Count 2; §§ 182, subd. (a); 211). As to both counts, the jury found the offenses were committed in association with a criminal street gang (§ 186.22, subd. (b)), and that a principal discharged a firearm causing death. (§ 12022.53, subds. (d), (e)(1).) The trial court sentenced Torres to an aggregate term of 50 years to life for the murder and firearm enhancement in count 1. The court imposed and stayed a consecutive aggregate term of 31 years to life for the conspiracy and firearm enhancement in count 2 pursuant to section 654. As to both counts, the court's minute order indicates that it imposed and stayed 10 year terms for the gang enhancement findings.[2]

On appeal, Torres argues the gang enhancement findings must be reversed for insufficiency of the evidence. We disagree. Further, Torres requests review of the trial court's ruling on his motion for discovery of police personnel records. (See *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).) We have done so and find no error. Finally, we remand for further proceedings pursuant to *People v. Franklin* (2016) 63 Cal.4th 261 (*Franklin*).

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[1] All further undesignated section references are to the Penal Code.

[2] The abstract of judgment merely indicates the gang enhancements were stayed.

FACTS

The Murder

Jong Woon Kim (the murder victim) owned and worked at a liquor store on Hawthorne Boulevard in Lawndale, in an area long "claimed" by the Lennox 13 criminal street gang. Kim always counted the day's receipts at the end of the night, and took the money home with him. The following day, he would use the money to buy supplies and make a bank deposit. He usually arrived at his home in Toluca Lake, on Chiquita Street, off Lankershim Boulevard, at about 12:30 a.m.

On November 18, 2010, shortly before 1:00 a.m., police responded to a dispatch call of a shooting at Kim's residence.[3] Upon arriving at the scene, police found Kim lying in the street, motionless and unresponsive, with blood coming from his upper body or head. Kim's rented car was parked in his driveway, with the driver's door open.

W. W. lived on Chiquita Street. Mr. W. was on his computer when he heard "crashing" sounds and a scream. He looked out a window but did not see anything. A short while later, a neighbor called to tell him there was a body in the street. Mr. W. went outside where he spoke to the police. Mr. W. maintained motion-activated surveillance cameras outside of his home. Police recovered video footage from the cameras.

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[3] Two neighbors in different homes on Chiquita Street, Kathleen J. and John J., heard gunshots sometime after 12:00 a.m. Another neighbor on Chaquita Street, I.S., was on his porch drinking a beer when he heard several loud "pops." I.S. saw a male wearing a black "hoody" running down the street toward Lankershim Boulevard. I.S. also heard the sound of a car idling, and then a door slam as the car "peeled away." I.S. called the police.

The video from the cameras showed a car in the street, two persons in dark clothing walking by, and bullet damage to a window in Mr. W.'s Mercedes parked in his driveway. The video also showed a person running toward Lankershim at the same time as the bullet hole appeared in the Mercedes. Police collected bullet fragments from the Mercedes, but the gun used in the shooting was never recovered.

Police also recovered video from surveillance cameras at nearby businesses on Lankershim Boulevard. Cameras on the roof of a building at the corner of Lankershim and Chiquita Street captured footage of Chiquita Street and an adjacent alleyway near the building parking lot. The videos showed a vehicle stopping in the alley for about 18 minutes shortly before the time of the shooting. While in the alley, three persons got out of the car, one from the driver's side and two from the passenger side. The driver of the car remained standing by the vehicle, and the two passengers walked toward Chiquita Street where the Kim residence was located. The car then moved onto Chiquita, made a U-turn to face the car in the direction of Lankershim, and stopped near the Kim residence and turned off its lights.

The videos later showed a white Toyota Camry (victim Kim's rental car) drive onto Chiquita Street and park at Kim's residence across the street from where the other car was stopped. Minutes later, one of the males seen on the video of the alley, who was wearing a light-colored hooded sweat shirt walked back toward the car parked across from the Kim residence, followed by the second male seen in the earlier video, who was wearing a dark-colored hooded sweatshirt. Both got in the parked car; the car drove away as soon as the second male entered. The car turned south onto Lankershim and drove out of view.

The Investigation — Torres' Car is Located

The Los Angeles Police Department (LAPD) circulated an internal "crime alert" to try to locate the suspects' vehicle seen on the video footage on Chiquita Street during the shooting. LAPD Officer Eric Peltier saw the flyer, and later reviewed the video footage from the crime scene. Officer Peltier observed a number of notable features on the car. Officer Peltier noted that the car had a two-tone color scheme, an extension on the rear bumper, a distinctive side fender, and primer marks or different paint colors on the top of the trunk or the back of the car. The primary detective assigned to investigate the Kim murder, LAPD Detective Mark O'Donnell, told Officer Peltier that after conducting his own research, he had narrowed the year and model of the car to be a 1988 to 1989 Honda Prelude.

In early May 2012, Officer Peltier entered the vehicle's features, and a framework of geographic information into a law enforcement computer search system, which generated a list of potential matching registered cars. He entered the information into a license plate reader system, "Palantier," which provides the various GPS coordinates of cars with vehicle license plates photographed by police cameras during routine law activities. Officer Pellitier's attention eventually focused on one vehicle, a Honda, which had been photographed in different locations from May 2009 through November 2010, and appeared to match the suspect car in certain details. In October 2010, about a month before the Kim murder, the Honda had been photographed while parked in front of Torres's residence on Fermone Avenue near Lennox Park. The imaged Honda was subsequently traced to a residence where Joel Rodriguez lived.

In October 2102, police impounded the Honda from Rodriguez's home. At trial, Rodriguez testified that he bought the Honda from Torres sometime around March 2012 (about four months after the Kim murder). After the police impounded the car, the trunk and hood were sanded down and darker color paint consistent with the color of the paint in the photographs taken before 2011 was detected below the outer paint.

During a search of Joel Rodriguez's bedroom, police recovered a written list of names and telephone numbers.

Torres' Interviews

As noted above, Detective Mark O'Donnell investigated the Kim murder. Detective O'Donnell first became aware of Torres as a person of interest in the case sometime around July of 2012, apparently as a result of Officer Peltier's investigation. Detective O'Donnell first had contact with Torres on October 10, 2012 at his residence, during a probation search of the premises in connection with his older brother. The residence was located on Fermone Avenue in Lennox, which were about 25 miles from the scene of the murder and about five miles from Kim's Liquor store.

O'Donnell interviewed Torres three times on October 10th. During the first interview at Torres's residence, Torres said that he had sold his car to his friend, Joel, one or two years before. Torres agreed to drive with O'Donnell to Rodriguez's home where the car was parked out in front of his apartment complex.

O'Donnell and his partner, Detective Townsend, interviewed Torres a second time at UEI Trade Tech College, where Torres was a student. This interview took place in the officers' police car parked at the school. During this interview, which was recorded, Torres said that, before he sold the Honda to Rodriguez, he (Torres) never gave anyone else permission to drive

his car. He said that when he first got the car, it was black, and that, at some point, he painted it a light grayish/white color.

O'Donnell showed Torres a still picture from a video recorded at the scene of the Kim murder, and Torres agreed the car appeared to be his. Torres said that he had not loaned his car to anyone, but recalled that his car had gone "missing" at one time from where he usually parked it in front of his house, and that he later recovered it at the Metro station with a friend's help. Torres had not reported the car stolen. Torres stated several times that he did not remember ever being in Toluca Lake; he denied being at the shooting scene. At the end of the interview, the officers arrested Torres and took him to the North Hollywood police station.

The detectives questioned Torres a third time at the police station after his arrest. During this interview, Torres explained more about the time his car had been "missing." He said he had gotten drunk at a party with three friends one night, and that, when he woke up at home the next morning, a friend named Armando Luna called and said that he had seen Torres's car parked at the Metro station. When the detectives asked for Luna's number, Torres handed them his cell phone. Using the number listed in the phone's contacts, one of the detectives called Luna, who reported that he had no memory of ever calling Torres about his car at the Metro station.

During the remainder of the third interview, Torres repeatedly denied being involved in, or being at the scene of, the shooting. At the end of the third interview at the police station, Torres was released.

Detective O'Donnell thereafter obtained and reviewed Torres's cell phone records. Detective O'Donnell determined that two numbers which were in contact with Torres's cell phone on the night of the Kim murder were those of Andrew Martinez, known as "Crimes," and Emmanuel Vialobos, known as "Chucks." Torres's phone records showed that, on November 14, 2010, four days before the Kim murder, Torres sent a text message to Chucks's cell phone. On November 17, 2010, during about a half-hour time span roughly two hours before the shooting of Kim (10:08 to 10:21 p.m.), Torres exchanged five text messages with Crimes. A text message was also sent earlier on November 17, at 8:00 p.m.

On November 29, 2012, Detective O'Donnell arrested Torres again in connection with the Kim murder. Detective O'Donnell interviewed Torres again, this time alone. A tape recorder activated when Torres entered the interview room.[4] A copy of the transcript of the interview was used at trial. After advising Torres of his constitutional rights, Detective O'Donnell asked Torres how he had allowed himself to be talked into driving his car to Toluca Lake with the other two males as passengers. Torres said that the males had contacted him a day or two before the incident, and told him that they intended to rob someone who always carried cash, and that they would give him some of the money if he drove them. Torres identified a photo of "Chucks" and said he was the person who had called him to help with the robbery. Torres also identified a photo of "Crimes,'" but denied that he knew Crimes and denied that Crimes had been in

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[4] At trial, Detective O'Donnell denied that, before the taping began, he had told Torres that he would not be liable for the murder if he admitted to participating in the planned robbery.

the car that night. Torres said that he did not know the second male who was in the car except that he appeared to be a friend of Chucks' and was wearing all black on the night of the shooting.

On the night of the incident, Torres picked up Chucks and the unknown male at an El Pollo Loco and they told him to drive to North Hollywood. One of them talked on a cell phone with Crimes, who described the victim and explained how the robbery should be committed. Chucks directed Torres to park the car in the alley and wait. When Kim's car arrived, Torres pulled out of the alley and parked his car on the street near Kim's house with headlights off. Chucks and the other male got out of Torres's car and walked away. Torres stayed in the car. A short while later, Chucks and the other male ran back to the car and Torres drove away. They said that they had shot the victim after he got out of his car, but did not say why. Torres recalled that "[t]he one in the front [seat]" passed a gun to "the one in the back [seat]," but could not recall whether Chucks or the other male had the gun initially " 'cause there was so much adrenaline . . . .' "

In the days after the shooting, Chucks called Torres and told him that his car had been broadcast on the news. Torres sold the car to Joel Rodriguez about a month later. Torres said that he never got any money and that Chucks told him the victim did not have any cash.

The Criminal Case

In November 2014, the People filed an amended information charging Torres with murder (count 1; § 187, subd. (a)) and conspiracy to commit robbery (count 2; § 182/211). Further, the information alleged as to both counts that the offenses were committed for the benefit of or in association with a criminal street gang (§ 186.22, subd. (b)), and that a principal

discharged a firearm causing death (§ 12022.53, subds. (d), (e)(1)).

In May 2015, the charges were tried to a jury, and the prosecution presented evidence establishing the facts summarized above. Detective O'Donnell's testimony about his investigation of Torres's cell phone was supported by additional evidence those actual records. In his defense, Torres presented an expert who testified on the subject of false confessions. Further, Torres called a witness on cell phone records who noted the limited nature of the contacts between Torres and Martinez, and Torres and Vialobos. Torres's older brother, Jesus, testified that he had been a member of the Lennox 13 gang, but that Torres had never been a member of the gang. A number of witnesses testified to Torres's character for niceness and helpfulness. In connection with the murder charge alleged in count 1, the trial court instructed the jury on felony-murder and aiding and abetting principles. On May 21, 2015, the jury returned a verdict finding Torres guilty as charged, with the gang and firearm enhancements found true. In September 2015, the court sentenced Torres as noted at the outset of this opinion.

DISCUSSION

I. Substantial Evidence Supports the Gang Benefit Findings

Torres contends the jury's gang findings as to both counts must be reversed because they are not supported by substantial evidence. He argues the evidence did not establish (1) that the Lennox 13 gang was in fact a criminal street gang as defined by the gang benefit statute; (2) that the conspirators who were shown to have planned the robbery — namely, Vialobos, Martinez and Torres — were all members of the Lennox 13 gang;

(3) that the participants in the attempted robbery that turned to murder — namely, Vialobos, Torres and the unidentified male — were all members of the Lennox 13 gang; and (4) that the attempted robbery/murder was intended by Torres to benefit the Lennox 13 gang. In sum, Torres argues the evidence at trial showed he participated in a crime of opportunity for his own interests, rather than in a "gang-related" crime. We disagree.

A. The Governing Law

The law governing appellate review of a challenge to the sufficiency of the evidence in support of a gang enhancement finding "is the same as that governing review of sufficiency claims generally. [Citation.]" (*People v. Leon* (2008) 161 Cal.App.4th 149, 161 (*Leon*).) Thus, in considering a challenge to the sufficiency of the evidence to support an enhancement finding, we review the entire record in the light most favorable to the finding to determine whether it contains substantial evidence — evidence that is reasonable, credible, and of solid value — from which a reasonable trier of fact could have based its decision. (*People v. Wilson* (2008) 44 Cal.4th 758, 806.) We must presume every fact in support of the judgment the trier of fact could have reasonably deduced from the evidence. (*Ibid.*) If the circumstances reasonably justify the trier of fact's finding, reversal is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.) Further, a reviewing court does not reweigh evidence nor reevaluate any witness's credibility. (*People v. Albillar* (2010) 51 Cal.4th 47, 59-60 (*Albillar*).)

To establish a gang enhancement, the prosecution must prove that the crime was "committed for the benefit of, at the

direction of, or in association with any criminal street gang," and that the defendant had "the specific intent to promote, further, or assist in any criminal conduct by gang members . . . ." (§ 186.22, subd. (b)(1).)

The prosecution is not required to prove that the defendant had the specific intent to "benefit a gang." (See *Albillar, supra,* 51 Cal.4th at p. 67; *Leon, supra,* 161 Cal.App.4th at p. 163.) A defendant is subject to increased punishment under the gang benefit statute when he commits a crime that is "gang-related," and he has the specific intent to promote, further, or assist *any* criminal conduct *by gang members*. (*Albillar, supra*, 51 Cal.4th at pp. 60-67.) Thus, the prosecution satisfies its burden by showing that the defendant committed a charged offense "in association with" a criminal street gang. That is, he commits a "gang-related" crime, and that he intended to promote, further, or assist in the criminal conduct of gang members. (*Leon, supra*, 161 Cal.App.4th at p. 163.) For this purpose, a showing that the defendant committed a charged offense in association with two or more members of a gang is sufficient to show a crime "in association with" the gang. (*Albillar, supra*, 51 Cal.App.4th at pp. 60-63.)

The gang enhancement statute does not require that a defendant be a member of a gang, only that he act "in association with" a gang with the intent to assist in criminal conduct by its members. (*People v. Morales* (2003) 112 Cal.App.4th 1176, 1198.)

B. Analysis — Primary Activities

We reject Torres's argument that the evidence failed to show that the Lennox 13 was a criminal street gang as defined in the gang enhancement statute. We are not persuaded that the

prosecution evidence did not show that the Lennox 13 gang's primary activities were crimes listed in the statute.

The prosecution's gang expert, Los Angeles Sheriff's Department Deputy Robert Poindexter, testified that he had extensive experience dealing with Lennox 13 gang members in his capacity as a gang investigator. As explained by Deputy Poindexter, he had been assigned to monitor Lennox 13 since 2011, when he transferred to the South Los Angeles Station, and had previously testified as an expert on the Lennox 13 gang. Deputy Poindexter was familiar with Lennox 13 gang members through his work duties, and had investigated crimes committed by Lennox 13 gang members.

During direct examination, the prosecutor asked Deputy Poindexter the following question: "What are the primary activities of the Lennox gangs?" Deputy Poindexter answered: "Anything from vandalism, robberies, car theft, sale of narcotics, weapons violation, shootings, carjacking, attempted murder, and murder." During ensuing questioning, Deputy Poindexter explained that robberies provided the gang with money to buy guns and "other material[s] for committing other crimes for the gang." Officer Poindexter testified about two separate crimes committed by Lennox 13 members whom he personally had contacted and knew to be Lennox 13 gang members and which resulted in felony convictions for robbery and assault with a deadly weapon.

Notwithstanding the evidence summarized above, Torres contends that Deputy Poindexter's testimony was lacking because he "provided no factual basis for his listing of the gang's primary activities," and did not "attribute[e]" his opinion regarding the gang's primary activities to his knowledge of the

gang, and did not testify explicitly that Lennox 13 members "consistently and repeatedly" committed the offenses which he opined were their primary activities.

We find the prosecution presented substantial evidence to prove the "primary activities" element of the section 186.22 gang enhancements. The jury had sufficient evidence to determine the primary activities of the Lennox 13 gang were crimes listed in the gang statute. No particular talismanic language is required to prove the primary activities of a gang. (See, e.g. *People v. Margarejo* (2008) 162 Cal.App.4th 102, 107-108 [jury could infer from expert's overall testimony what the gang's "primary" activities were]; *People v. Duran* (2002) 97 Cal.App.4th 1448, 1465-1466 [although expert did not explicitly testify that gang's "primary" activities were the commission of predicate crimes, overall evidence supported jury's gang enhancement finding].) Here, Deputy Poindexter plainly qualified as an expert on the Lennox 13 gang. He had personal involvement with the gang. The reasonable inference to be drawn from his testimony, taken as a whole, was that he was "attributing" his opinion to his expertise and knowledge.

We find Torres's reliance on *In re Alexander L.* (2007) 149 Cal.App.4th 605 (*Alexander L.*), for a different result regarding substantial evidence to be unpersuasive. In *Alexander L.*, the totality of the prosecution's gang expert testimony regarding a gang's primary activities was recounted and described by the court of appeal as follows:

" 'I know they've committed quite a few assaults with a deadly weapon, several assaults. I know they've been involved in murders. [¶] I know they've been involved with auto thefts, auto/vehicle burglaries, felony graffiti, narcotic violations.' No

further questions were asked about the gang's primary activities on direct or redirect examination.

"[The expert]'s entire testimony on this point is quoted above — he 'kn[e]w' that the gang had been involved in certain crimes. No specifics were elicited as to the circumstances of these crimes, or where, when, or how Lang had obtained the information. He did not directly testify that criminal activities constituted [the gang]'s primary activities. Indeed, on cross-examination, [the expert] testified that the vast majority of cases connected to [the gang] that he had run across were graffiti related." (*Alexander L., supra*, 149 Cal.App.4th at pp. 611-612.)

Here, Deputy Poindexter's expert gang testimony was not of the conclusory nature of the expert in *Alexander L.* On the contrary, Deputy Poindexter explained his background, and that he worked on Lennox 13 gang crimes, that he had talked to other officers and to members of the gang. He explained the primary activities of the gang, and how crimes, in particular, robberies, benefited the gang. Deputy Poindexter did not merely offer that he "knew" about the gang, with no foundation for his testimony. We simply do not see an *Alexander L.* case of conclusory expert testimony in Torres's present case.

C. Analysis — Conspiracy to Commit Robbery

The evidence in the record supports a conclusion that Torres committed the offense of conspiracy to commit robbery offense "in association with" Martinez and Vilalobos. We reject Torres's argument that the evidence did not show that Martinez and Vilalobos were members of the Lennox 13 gang. Thus, the evidence showed that Torres committed the offense of conspiracy to commit robbery "in association with" the Lennox 13 gang.

As to co-conspirator Martinez, Deputy Robert Poindexter, testified — without a defense objection —that he spoke with other officers in the gang unit regarding Martinez, after which he investigated and spoke with other members of Lennox 13. Deputy Poindexter testified that, "based on the information [he] obtained [he concluded that Torres] was a member of Lennox 13 and ha[d] been for a few years." Further, Deputy Poindexter testified that he had examined Martinez's Facebook account, and noted a dialogue between Martinez and another individual with references to "licks," "straps," and "homies." Deputy Poindexter opined that those were terms "gang members like to use," and that mention of committing a robbery for "straps" money referred to using the money gained from a robbery to purchase guns. We are satisfied the evidence showed Martinez was a gang member.

As for Vialobos, Deputy Poindexter testified that he had personally "handled [a] case with him" for a 2011 shooting, and testified that Vialobos was an active member of Lennox 13 back in 2010. Again, we are satisfied the evidence showed that Vialobos was member of the Lennox 13 gang.

D. Analysis — First Degree Felony Murder

At trial, the court instructed the jury with CALCRIM No. 540B as follows: "The defendant is charged in Count One with murder, under a theory of felony murder. The defendant may be guilty of murder, under a theory of felony murder, even if another person did the act that resulted in the death. I will call the other person the perpetrator. To prove that the defendant is guilty of first degree murder under this theory, the People must prove that: 1. The defendant aided and abetted an attempted robbery, or was a member of a conspiracy to commit robbery; 2. The defendant intended to aid abet the perpetrator in committing or

attempting to commit robbery, or intended that one of more members of the conspiracy commit robbery. . . . ." In short, Torres's criminal liability for the felony-murder of the victim during the attempted armed robbery could be that of both or either a conspirator and or an aider and abettor.

Torres's arguments on appeal do not persuade us to apply any different reasoning to the gang enhancement as to count 1 charging felony murder, than to our reasoning above as to count 2 for conspiracy to commit robbery. As to both counts, the evidence supports a conclusion that Torres committed the charged crimes "in association with" two or more gang members, and that he intended to assist in the criminal conduct of gang members. Having joined the conspiracy to commit the robbery with two gang members, Torres did not end his involvement in the conspiracy at any point prior to the murder during the commission of the robbery. During the drive to the scene of the planned robbery in Toluca Lake, Torres and Martinez, a Lennox 13 gang member, continued in contact with Vialobos, another Lennox 13 gang member, on how to commit the robbery. Torres's acts to help carry out the planned robbery continued to be "in association with" multiple members of the Lennox 13 gang at all relevant times.

The evidence in this case supports the conclusion that Torres planned and participated in a robbery "in association with" two or more gang members, resulting in a felony-murder. Accordingly, the gang enhancement was properly applied to both the conspiracy to commit robbery count and the felony murder count.

II. There was no Inappropriate Hearsay Admitted

Torres next contends the jury's verdicts must be reversed because certain aspects of the gang expert testimony of Deputy Poindexter violated *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*). We disagree.

In *Sanchez*, the Supreme Court considered the extent to which a gang expert witness is permitted to relate case-specific hearsay in explaining the basis for an opinion, and the extent to which the right of confrontation as articulated in *Crawford v. Washington* (2004) 541 U.S. 36 limits state hearsay rules governing such expert testimony. The court held that case-specific, out-of-court statements conveyed by a gang expert constitute inadmissible hearsay under state law and, to the extent they are "testimonial," run afoul of *Crawford* as well. (*Sanchez, supra*, 63 Cal.4th at pp. 670-671.)

In Torres's present case, he objects to the parts of Deputy Poindexter's testimony offering his opinion that Martinez and Vialobos were members of the Lennox 13 gang. The evidence, argues Torres, is important in that it supports the element of the gang enhancement that Torres's committed the charged crimes in association with the Lennox 13 gang. Torres argues that, without the evidence, there is no support for the conclusion that he committed the crimes in association with gang members. We address the evidence as to Martinez and Vialobos separately, in light of *Sanchez*.

As to Vialobos, we see no *Sanchez* implications. As noted above, Deputy Poindexter testified that he knew Vialobos to be a member of the Lennox 13 gang because he had personally investigated crimes involving Vialobos. In short, the foundational support for Deputy Poindexter's opinion as to

Vilalobos's gang membership was not based on hearsay related to the deputy by other officers or other gang members.

With regard to Martinez, as noted above, Deputy Poindexter testified that his opinion that Martinez was a member of the Lennox 13 gang was based in part on "information [he] obtained" from other police officers and members of the Lennox 13 gang. Deputy Poindexter's testimony did not relate any of the specifics of his discussions with such other police officers or other gang members.

In *Sanchez*, the Supreme Court noted that "[t]here is a distinction to be made between allowing an expert to describe the type or source of the matter relied upon as opposed to presenting, as fact, case-specific hearsay that does not otherwise fall under a statutory exception." (*Sanchez, supra*, 63 Cal.4th at p. 686.) We find that Deputy Poindexter's testimony regarding the basis for his opinion about Martinez's gang membership falls within the former, allowable scope of expert testimony. The deputy did not present, as fact, any case-specific hearsay about Martinez's gang membership.

But even assuming that that Deputy Poindexter's testimony about Martinez's gang membership was implicitly and improperly based upon hearsay information related to him by other officers and other gang members, and that this violated *Sanchez,* we find the assumed *Sanchez* error to have been harmless.[5]

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[5] *Sanchez* was decided after Torres's trial. At trial, Torres did not object to the aspects of Deputy Poindexter's testimony now challenged on appeal under *Sanchez*. Ordinarily, a failure to object to evidence at trial forfeits any claim of error associated with the admission of the evidence. (See, e.g., *People v. Dykes*

The *Sanchez* decision explains that the standard for harmless error review after an expert has improperly related hearsay evidence that was not independently proven at trial depends upon whether the error violated only state evidence law or the Confrontation Clause. Where the hearsay evidence was not "testimonial" in nature, and therefore violated only state evidence law, relief is required only if the record shows it is reasonably probable appellant would have obtained a more favorable result absent the alleged error. (*Sanchez, supra*, 63 Cal.4th at p. 698.) Where the hearsay evidence was "testimonial," the violation of the Confrontation Clause warrants relief unless the error was harmless beyond a reasonable doubt. (*Ibid*.)

Even under the more strident standard of constitutional harmless error analysis, we find the assumed *Sanchez* error to have been harmless. Apart from referring to discussions with others regarding Martinez's gang membership, Deputy Poindexter testified that his opinion about Martinez's gang membership was based on Martinez's Facebook account, in which he made a number of statements indicative of his involvement in gang activity. We are satisfied beyond a reasonable doubt that, even if the jury had not heard the deputy's allusion to discussion with others, the jury would have found that Martinez was a member of the Lennox 13 gang.

(2009) 46 Cal.4th 731, 756.) Nevertheless, because we resolve Torres's claim by examining for prejudice, we assume he has properly asserted *Sanchez* error.

III. *Pitchess* Review

In a supplemental opening brief on appeal, Torres has requested our court to review the record independently to determine whether the trial court (1) conducted a proper *Pitchess* review in camera, and (2) properly ruled on the reach of discovery of the officers' personnel files. Such review on appeal is proper under the procedures set forth in *People v. Mooc* (2001) 26 Cal.4th 1216. The People's respondent's brief agrees that review on appeal is proper.

We have reviewed (1) Torres's *Pitchess* motion for discovery of LAPD Detective O'Donnell's personal records for evidence in the vein of fabricated evidence, reports or testimony; (2) the prosecution's response, and (3) the transcript of the trial court's in camera review on January 5, 2015. We find that the court properly conducted the *Pitchess* review hearing, describing the nature of all complaints, if any, against the officer. Further, we find the court did not abuse its discretion in ruling there was no discoverable evidence to disclose.

IV. The *Franklin* Proceeding Issue

In a second supplemental opening brief, Torres contends we should remand his case for further proceedings pursuant to the Supreme Court's recent decision in *Franklin, supra*, 63 Cal.4th 261 because he committed his crimes when he was only 19 years old. Torres argues we should direct the trial court to make a record under sections 3051 and 4801 regarding any factors related to his youth that may become relevant in a future Parole Board hearing. In a respondent's supplemental brief, the People agree that remand is "warranted" under *Franklin*. We agree with the parties' consistent position.

Section 3051, subdivision (b)(1), states that, when a defendant is convicted for an offense that he or she committed before age 23, and is sentenced to a life term, the defendant "shall be eligible for release on parole at a youth offender parole hearing by the [Parole Board] during his or her 15th year of incarceration . . . ." Section 3051, subdivision (f)(1), sets forth the requirements for the factors that shall be considered at such a hearing.

In *Franklin*, the trial court sentenced a juvenile defendant to an indeterminate sentence of 50 years to life for murder. On appeal, the defendant argued that his sentence violated constitutionally-based rules governing juveniles in that the sentence amounted to the equivalent of a sentence of life without the possibility of parole in violation of *Miller v. Alabama* (2012) 567 U.S. ___; 132 S.Ct. 2455 and related cases. Our Supreme Court in *Franklin* found the defendant's claim to be moot in light of SB 260, which, by "operation of law," now grants juvenile defendants who have received "lengthy" sentences the opportunity for a hearing to seek parole before the end of their sentences. (*Franklin, supra*, 63 Cal.4th at pp. 280-282.) SB 260 became effective January 1, 2014.

At the same time, however, the Supreme Court noted in *Franklin*: "It is not clear whether Franklin had sufficient opportunity to put on the record the kinds of information that sections 3051 and 4801 deem relevant at a [future] youth offender parole hearing. Thus, although Franklin need not be resentenced . . . , we remand the matter to the trial court for a determination of whether Franklin was afforded sufficient opportunity to make a record of information relevant to his

eventual youth offender parole hearing." (*Franklin, supra*, 63 Cal.4th at p. 284.)

The Supreme Court explained that, in the event the trial court were to find that Franklin did not have a sufficient opportunity to make such a record, the court was to allow him to do so, under governing rules of evidence including cross-examination. Also, the prosecutor was to be allowed "likewise [to] put on the record any evidence that demonstrates the juvenile offender's culpability or cognitive maturity, or otherwise bears on the influence of youth-related factors." (*Franklin, supra*, 63 Cal.4th at p. 284.) "The goal of any such proceeding is to provide an opportunity for the parties to make an accurate record of the juvenile offender's characteristics and circumstances at the time of the offense so that the Board, years later, may properly discharge its obligation" in reviewing the decision to grant or deny parole under sections 3051 and 4801. (*Ibid*.)

Here, Torres was convicted in May 2015 and sentenced in September 2015. Although sections 3051 and 4801 had become effective by that time, *Franklin* had not yet been decided, and Torres had no reason to seek an opportunity at the time of his sentencing to preserve a record for later use at a juvenile offender Parole Board hearing. Under *Franklin*, Torres is entitled to a remand for a determination as to whether the parties should be granted an opportunity to make a record for purposes of sections 3051 and 4801. (See *People v. Perez* (2016) 3 Cal.App.5th 612, 618-619 [remand for *Franklin* hearing for 20 year old defendant].) On remand, should the trial court determine a hearing is proper, both parties are entitled to present evidence regarding the factors mentioned in *Franklin*.

DISPOSITION

The judgment is affirmed. The matter is remanded to the trial court for further proceedings consistent with *Franklin, supra*, 63 Cal.4th 261.

BIGELOW, P.J.

We concur:

FLIER, J.

GRIMES, J.