

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

BRANDON STEVEN LOVATO,

Defendant and Appellant.

B268851

(Los Angeles County  
Super. Ct. No. TA130307)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kelvin D. Filer, Judge. Affirmed.

Christine C. Shaver, 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, and Mary Sanchez and Esther P. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

---

Brandon Steven Lovato appeals from his judgment of conviction of two counts of attempted willful, premeditated, and deliberate murder (Pen. Code,<sup>1</sup> §§ 664, 187, subd. (a)) and one count of possession of a firearm by a felon (§ 29800, subd. (a)(1)) with true findings on related firearm enhancements (§ 12022.53, subds. (b), (c), (d)) and gang enhancements (§ 186.22, subd. (b)). On appeal, Lovato argues that (1) the trial court may have abused its discretion in determining whether all discoverable material in the investigating officer's personnel file was disclosed, and (2) the evidence was insufficient to support the finding that Lovato was the perpetrator of the charged crimes. We affirm.

## **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

### **I. The Charges**

In an information filed by the Los Angeles County District Attorney, Lovato was charged with two counts of attempted willful, premeditated, and deliberate murder (§§ 664, 187, subd. (a)), and one count of possession of a firearm by a felon (§ 29800, subd. (a)(1)). As to each count, it was alleged that Lovato committed the offense for the benefit of, at the direction of, or in association with a criminal street gang, and with the specific intent to promote, further, or assist in criminal conduct by gang members (§ 186.22, subd. (b)(1)). As to the attempted murder counts, it was alleged that Lovato personally and intentionally discharged a firearm during the commission of the offenses (§ 12022.53, subds. (b), (c), (d)). It also was alleged that Lovato had served two prior prison terms within the meaning of section

---

<sup>1</sup> All further statutory references are to the Penal Code.

667.5, subdivision (b). Lovato pled not guilty to each count and denied the enhancement allegations.

## **II. The Prosecution Evidence**

### **A. The Shooting**

On September 28, 2013, at around 4:00 p.m., William Winston met his friend Jeremiah Steppes and Steppes' cousin, Andrew, at the parking lot of a doughnut shop in Lynwood, California. The three men got into Steppes' car and drove to his home. As Steppes pulled into his driveway, he commented on a black car that was passing by. A short time later, the men returned to the doughnut shop. Winston saw a black Cadillac CTS parked across the street near a restaurant. Winston knew that the Cadillac belonged to Lovato, and that Lovato was a member of the Barrio Los Padrinos (BLP) gang. Both Winston and Steppes associated with members of a rival gang, Palm and Oak, and Winston had seen Lovato in the area on a number of prior occasions.<sup>2</sup>

As Winston and Steppes stood in the parking lot talking, they suddenly heard the sound of gunfire. Winston ducked down and tried to run away, but he was struck by a bullet on his right leg. He fell to the ground and was then hit by multiple bullets on both legs. When Winston turned around, he saw Lovato holding a gun. Lovato was wearing a tank top and plaid shorts, and Winston immediately recognized his face. Lovato turned and ran

---

<sup>2</sup> On one occasion in April 2012, Winston had a confrontation with Lovato. During that incident, Lovato and several other BLP gang members saw Winston walking along a street in Lynwood, chased him down, and robbed him.

in the other direction, yelling “BLP.” Winston crawled to safety and hid behind a car until help arrived. Winston sustained eight gunshot wounds to his legs. He was hospitalized for a month, and confined to a wheelchair for nine months after the shooting.

Steppes initially turned toward the gunfire when shooting began, but did not get a good look at the shooter. As the shots continued, he started to run away. Steppes was shot in the back, but was able to keep running until he reached a place of safety. He suffered a collapsed lung and was hospitalized for a week. Steppes saw that the shooter was Hispanic and wore something grey, but could not otherwise identify him.

#### **B. The Police Investigation**

Los Angeles County Sheriff’s Deputies Paul Ocampo and Daniel Velasco responded to the scene of the shooting. Upon their arrival, the deputies saw Winston lying face down on the street with a gunshot wound to his leg. Winston was moaning and appeared to be in a lot of pain. According to Deputy Ocampo, Winston stated that two Hispanic men ran up to him, shouted “BLP,” and began shooting at him. While Deputy Ocampo stayed with Winston, Deputy Velasco went to check on Steppes, who was on the ground a short distance away. Steppes had a gunshot wound to his back and also appeared to be in pain. According to Deputy Velasco, Steppes stated that he was shot by two Hispanic men with shaved heads who were about 22 years old and between five feet, five inches and five feet, seven inches tall. Steppes also

stated that one of the men was wearing a grey shirt and black pants or shorts.<sup>3</sup>

During a search of the scene, the deputies found eight .40 caliber expended bullet casings in the parking lot of the doughnut shop. Surveillance video from the restaurant across the street showed a black Cadillac CTS circling the area before parking near the restaurant. A man exited the front passenger side of the Cadillac and ran toward the doughnut shop out of the camera's view. About 10 seconds later, the man got back into the Cadillac, which then sped away. From the video, the deputies were able to obtain a partial license plate number for the Cadillac, and a DMV records search showed that the vehicle was registered to Lovato.

Approximately four hours after the shooting, Lovato was arrested at his home. A gunshot residue test was performed on Lovato at the time of his arrest, and the results showed the presence of gunshot residue on his hands. Lovato's cell phone was seized during the arrest, and the carrier's records indicated that the cell phone was in close proximity to the scene of the shooting around the time that it occurred.

Sheriff's Detective Michael Haggerty was lead investigator on the case. Four days after the shooting, Detective Haggerty and his partner conducted separate audio recorded interviews with Winston and Steppes in the hospital. Both men were calm and cooperative during the interviews, although Winston was apprehensive about assisting the police. Neither Winston nor Steppes told the detectives that there were two men involved in

---

<sup>3</sup> At trial, both Winston and Steppes denied that they told the officers at the scene that there were two men involved in the shooting.

the shooting. Winston also did not immediately disclose that he knew the identity of the shooter. It was not until the interview had ended and the detectives were preparing to leave that Winston first indicated that he knew the person who had shot him. Winston then stated that the shooter was Lovato from the BLP gang. Detective Haggerty subsequently showed Winston a six-pack photographic lineup that included Lovato, and Winston again identified Lovato as the shooter.

### **C. The Gang Expert**

Sheriff's Detective Marc Boisvert testified as a gang expert for the prosecution. According to his testimony, Barrio Los Padrinos (BLP) was a criminal street gang with approximately 60 members, and one of its main rivals was the Palm and Oak gang. The primary activities of BLP included vandalism, robbery, gun possession, drug sales, vehicle theft, assault, and murder. Lovato was a self-admitted BLP gang member. Winston was a member of the rival Palm and Oak gang, and based on Winston's statement to the police, Steppes also was affiliated with that gang. The area where the shooting occurred was a common meeting place for Palm and Oak gang members. When presented with a hypothetical based on the facts of the case, Detective Boisvert opined that the shooting would have been committed for the benefit of, at the direction of, and in association with a criminal street gang.

### **III. Defense Evidence**

Alicia Guzman was in the parking lot across the street from the doughnut shop when the shooting occurred. She saw a Latino man exit the passenger side of a dark-colored car and run toward the doughnut shop. He was wearing a black shirt, gray shorts, a

baseball cap, and a bandana over his face. The man stopped near the doughnut shop, pulled out a gun, and fired multiple shots at another person. He then got back into the car and left the area. Guzman never saw the man remove his baseball cap or bandana during the shooting.

Bryan Burnett testified for the defense as an expert in the field of gunshot residue. According to his testimony, the gunshot residue found on Lovato did not necessarily mean that Lovato recently had discharged a firearm. Although the gunshot residue could have come from the shooting, it also was possible that such particles could have been transferred to Lovato as a result of his presence in a “police environment,” such as a patrol car, around the time of testing.

Lovato testified on his own behalf. He admitted that he joined the BLP gang as a teenager, but denied that he was still an active member of the gang. On the day of the shooting, Lovato got out of bed at around 2:00 p.m. At around 4:00 p.m., he went to his father’s machine shop in Paramount and stayed there until 6:00 p.m. He then went to a friend’s house in Downey for a barbeque. At around 7:00 p.m., Lovato left his friend’s house and went to pick up his girlfriend in South Los Angeles. Lovato and his girlfriend then drove back to his home so that he could change his clothes for dinner. As Lovato was approaching his home, a police officer pulled him over and placed him under arrest. Lovato admitted that, on the day of the shooting, he had his cell phone with him and was driving his black Cadillac CTS. He

denied, however, that he was present at the scene of the shooting or had any involvement in the charged crimes.<sup>4</sup>

#### **IV. Verdict and Sentencing**

At the conclusion of the trial, the jury found Lovato guilty as charged on all three counts. The jury also made true findings on each firearm enhancement and gang enhancement allegation. The trial court sentenced Lovato to an aggregate term of 42 years to life in state prison. Lovato thereafter filed an appeal.

### **DISCUSSION**

#### **I. The *Pitchess* Motion**

Prior to trial, Lovato made a motion under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*) for a review of Detective Haggerty's personnel file to determine whether he had a history of misconduct. The trial court granted the motion with respect to allegations of dishonesty, including the fabrication of evidence and falsification of police reports. After reviewing the records at an in camera hearing, the trial court ordered that certain materials be disclosed. Lovato has requested that we conduct an independent review of the sealed record to determine whether any discoverable information was withheld.<sup>5</sup> We accordingly have reviewed the sealed record of the in camera

---

<sup>4</sup> The parties stipulated at trial that Lovato previously had been convicted of a felony that prohibited him from possessing a firearm.

<sup>5</sup> Lovato has not appealed the trial court's decision to limit its review of Detective Haggerty's personnel records to those concerning allegations of dishonesty.



proceedings, and conclude that the trial court properly exercised its discretion in determining the *Pitchess* materials to be disclosed. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1229.)

## **II. Sufficiency of the Evidence on the Convictions**

Lovato challenges the sufficiency of the evidence supporting his convictions for attempted murder and possession of a firearm by a felon. He specifically contends that the evidence was insufficient to support the jury's finding that he was the person who committed the shooting. We conclude that Lovato's convictions were supported by substantial evidence.

### **A. Standard of Review**

In assessing a claim of insufficient evidence, “we review the whole record to determine whether *any* rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] 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. [Citation.]’ (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

**B. Substantial Evidence Supported the Jury’s Finding that Lovato Was the Shooter**

Lovato argues that his convictions for attempted murder and possession of a firearm by a felon must be reversed because the evidence that he was the person who shot Winston and Steppes was based on inconsistent and unreliable eyewitness testimony. It is well-established, however, that “[c]onflicts and even testimony which 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.] Unless it describes facts or events that are physically impossible or inherently improbable, the testimony of a single witness is sufficient to support a conviction. [Citation.]” (*People v. Elliott* (2012) 53 Cal.4th 535, 585; see *People v. Boyer* (2006) 38 Cal.4th 412, 480 “[i]dentification of the defendant by a single eyewitness may be sufficient to prove the defendant’s identity as the perpetrator”). Therefore, “[e]xcept in ... rare instances of demonstrable falsity, doubts about the credibility of [an] in-court witness should be left for the jury’s resolution... .” [Citation.]” (*People v. Hovarter* (2008) 44 Cal.4th 983, 996.)

In this case, there was substantial evidence to support a finding that Lovato was the perpetrator of the charged crimes. At trial, Winston positively identified Lovato as the person who shot him. Winston testified that he saw the front of Lovato’s face

moments after he was shot, and that he recognized Lovato immediately because he knew Lovato from a prior incident where Lovato and other members of the BLP gang robbed him. In addition to his in-court identification, Winston identified Lovato as the shooter in an interview with Detective Haggerty a few days after the shooting, and in a six-pack photographic lineup that was shown to him following the interview. Although Steppes was unable to identify the person who shot him, he testified that the individual was a Hispanic man and wore something gray. Guzman, who witnessed the shooting from across the street, similarly told the police that she saw a Latino man in a black shirt and gray shorts get out of a black Cadillac, pull out a gun, and fire multiple shots at another person.

The eyewitness testimony presented at trial also was corroborated by physical evidence. Consistent with Winston's testimony that he saw Lovato's black Cadillac CTS parked across the street prior to the shooting, surveillance video from a nearby restaurant showed Lovato's car circling the area several times before parking across the street from the doughnut shop where the shooting occurred. The surveillance video also showed a man get out of the Cadillac, run toward the doughnut shop, and about 10 seconds later, run back to the car, which then sped off. While Lovato claimed at trial that he was nowhere near the scene of the shooting, his cell phone records placed him in close proximity to the doughnut shop at the time the shooting occurred. Moreover, when Lovato was arrested a few hours after the shooting, gunshot residue was found on his hands. From this evidence, the jury reasonably could have concluded that Lovato was the person who exited the Cadillac and then shot both Winston and Steppes.

Lovato nevertheless asserts that the eyewitness testimony was inconsistent and inherently unreliable. He points out that Winston's identification of Lovato as the sole shooter contradicts his statement to the police at the scene that two Hispanic men ran up to him, shouted BLP, and then began shooting. Steppes likewise told the police at the scene that he had been shot by two Hispanic men, but testified at trial that he only saw one shooter. In addition to these inconsistencies, Lovato notes that, while Guzman testified that the shooter wore a baseball cap and a bandana over his face, both Winston and Steppes denied seeing the shooter with a hat or bandana. The surveillance video, on the other hand, appeared to show that the suspect wore a baseball cap, but no covering on his face. Despite these conflicts in the evidence, however, Winston's identification of Lovato as the shooter was neither physically impossible nor inherently improbable. Winston testified at trial that he had a clear view of the shooter's face and was certain it was Lovato. The jury also reasonably could have found that the statements made by Winston and Steppes at the scene were not reliable given that both victims were scared and in severe pain from their injuries, and that Winston's subsequent identification of Lovato as the sole perpetrator was more credible and consistent with the physical evidence. Any weaknesses or inconsistencies in the eyewitness testimony were matters to be weighed by the jury.

Lovato also argues that Winston's identification of him as the shooter was highly improbable based on the circumstances surrounding Winston's interview with Detective Haggerty at the hospital four days after the shooting. Lovato notes that, during that audio recorded interview, Winston did not initially disclose that he knew the identity of the shooter. It was not until after

Detective Haggerty had stopped the recorder and was preparing to leave that Winston suddenly stated that he knew the person who had shot him. At that point, Detective Haggerty restarted the recorder and Winston revealed that the shooter was Lovato. Given the timing of Winston's disclosure, Lovato contends that there is a strong inference that Detective Haggerty or his partner unduly influenced Winston's identification while the recorder was turned off. However, evidence casting doubt on the credibility of Winston's identification was presented to the jury and argued at length by defense counsel at trial. Lovato's counsel had a full opportunity to cross-examine Winston about his recollection of events surrounding the shooting and the details of his statements to the police at the scene and in the hospital. Lovato's counsel also had an opportunity to cross-examine Detective Haggerty about his investigation into the shooting, including both the recorded and unrecorded portions of his interview with Winston.

The jury accordingly was able to judge the credibility of the eyewitness identification testimony, and reasonably could have concluded from the totality of the evidence presented that Lovato was the person who committed the shooting. On this record, Lovato's convictions for attempted murder and possession of a firearm by a felon were supported by substantial evidence.

## **DISPOSITION**

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SMALL, J.\*

---

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