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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>ANTHONY TERREL WILLIAMS,<br><br>Defendant and Appellant. | B236688<br><br>(Los Angeles County<br>Super. Ct. No. MA052126) |

APPEAL from a judgment of the Superior Court of Los Angeles County. Richard Naranjo, Judge. Affirmed.

Robert Bryzman, 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, Senior Assistant Attorney General, Steven D. Matthews, Supervising Deputy Attorney General, and Analee J. Brodie, Deputy Attorney General, for Plaintiff and Respondent.

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Defendant Anthony Terrel Williams appeals from the judgment entered following a jury trial in which he was convicted of shooting from a vehicle and two counts of attempted murder with findings of willfulness, premeditation, and deliberation. The jury also found true gang and firearm discharge allegations. Defendant contends the trial court erred by failing to conduct a hearing pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*) and that insufficient evidence supports the finding that the attempted murders were willful, deliberate, and premeditated. We affirm.

## BACKGROUND

Between 8:30 and 9:00 p.m. on February 6, 2011, Alfonzo Hicks, Jr., and Lee Harris Jones were walking in Palmdale. (Undesignated date references pertain to 2011.) As they crossed a street, a gray Chevrolet HHR driven by defendant pulled up. Hicks testified there was a "boy" in the front seat, and Jones testified there were two or three passengers. Defendant asked Hicks and Jones, "'Where you from?'" Hicks replied, "'That's irrelevant,'" and continued walking. Hicks testified that defendant responded, "'You're a bitch,'" and Hicks said the same thing to defendant. Jones testified that first defendant, then Hicks, said, "'You're a bitch-ass nigger.'" Hicks saw defendant reaching for something. Hicks turned and he and Jones kept walking. Defendant began shooting at them, and they ran. Hicks and Jones testified they heard four or five shots. They ran through an open lot and then an alley, where Hicks felt weak and went to the ground. He had been shot in the chest and the side, and was hospitalized for about two weeks. No expended casings were found at the site of the shooting.

Hicks told sheriff's personnel that defendant had been driving a gray Chrysler PT Cruiser. Hicks identified defendant in a photographic array and at trial. Hicks did not know defendant and denied membership in any gang, but some of his cousins were members of the Pasadena Denver Lanes Bloods gang. Detective Michael Thompson testified that a field identification card on Hicks indicated he belonged to a "very small local gang, that in the past year or so has been absorbed into the Pasadena Denver Lanes Bloods gang."

Jones also denied being in any gang, but many of his family members were gang members. He recognized defendant from having played basketball with him a few times. He described defendant to sheriff's personnel and initially said defendant was driving a gray HHR or PT Cruiser, but later settled on an HHR when police showed him one. Jones identified defendant in a photographic array as the shooter and was certain about his identification. Jones was a reluctant witness at trial and said he was not sure, but defendant looked like the shooter.

Defendant was arrested in a Palmdale apartment on March 9. A gray HHR registered to a woman in the same apartment was parked outside. Hicks and Jones identified a photograph of the car as looking like the one defendant was driving at the time of the shooting. No gun or ammunition was found.

Detective Thompson investigated the shooting and testified as the prosecution's gang expert. Defendant was a self-admitted member of the Grape Street Crips gang, with the most recent admission occurring in January 2011. Among the rivals to defendant's gang was the Pasadena Denver Lane Bloods gang, which claimed the area in which the shooting occurred. Thompson testified that a gang member will ask unfamiliar people where they are from in order to identify other gang members, particularly if the gang member is in the territory of a rival gang and wants to commit an assault on a rival gang member. Gang members enhance their gang's reputation and their own reputation within their gang by committing crimes on behalf of their gang, including assaulting members of rival gangs. In response to a hypothetical based upon the prosecution's evidence, Thompson opined that the shootings were committed for the benefit of the Grape Street Crips gang. The "where are you from" inquiry demonstrated that the shooter was looking for a rival gang member "to interact with," and shooting in a rival gang's territory would enhance the reputation and notoriety of both the shooter and his gang, thereby increasing "the respect and fear of the Grape Street Crip gang . . . ."

Defendant presented no evidence in his defense.

The jury convicted defendant of shooting from a vehicle and two counts of attempted murder. It found each attempted murder to have been willful, deliberate, and premeditated. It also found that the crimes were committed for the benefit of, at the direction of, and in association with a criminal street gang with the specific intent to promote, further, or assist criminal conduct by gang members. The jury further found that defendant personally fired a gun, causing great bodily injury in the commission of the attempt to murder Hicks and the shooting from a vehicle count. (Pen. Code, § 12022.53, subd. (d); undesignated references are to the Penal Code.) With respect to the attempt to murder Jones, the jury found defendant personally fired a gun. (§12022.53, subd. (b).) Defendant admitted that he had suffered a prior serious felony conviction, which was alleged under both section 667, subdivision (a)(1) and the "Three Strikes" law. He further admitted three prior prison term allegations. (§ 667.5, subd. (b).) The court sentenced defendant to a second strike term of 115 years to life in prison, consisting of 15 years to life, doubled, for each attempted murder, 25 years to life for the section 12022.53, subdivision (d) enhancement, 20 years for the section 12022.53, subdivision (b) enhancement, and 5 years for the section 667, subdivision (a)(1) enhancement for each attempted murder count.

## DISCUSSION

### 1. Failure to conduct *Marsden* hearing

Defendant was arraigned on May 9. On June 1, the trial court set a trial date of June 28. On June 16, defense counsel filed a written motion to continue the trial date on the ground that further preparation was required. At the hearing on the motion, defense counsel informed the court that his investigator had been unable to interview five witnesses, and without those interviews, counsel could not determine whether there was an affirmative defense. In addition, counsel was leaving the country for a two-week vacation beginning July 5. Counsel had discussed the necessity for a continuance with defendant, but defendant was insisting on a speedy trial and would not agree to a continuance. The court had an off-the-record discussion with defendant, then

memorialized on the record that it had explained to defendant that if he objected to the continuance, his defense would "in all likelihood" be "transferred to a different attorney" who "would be forced to prepare on short notice and not all the witnesses may be interviewed." Defendant insisted on a speedy trial, and the court denied the motion for continuance.

In an appearance the next day, defense counsel asked the court to grant the continuance over defendant's objection. He informed the court that the continuance was necessary because "[t]here is investigation, preparation that has to be done and motions that have to be made." Counsel noted that he had not received all of the discovery, he anticipated making "a formal discovery motion and a *Pitchess* [*v. Superior Court* (1974) 11 Cal.3d 531] motion, and there may be a necessity for some forensic enhancement of evidence." The court stated it would continue the trial date to July 28 to protect defendant's right to the effective assistance of counsel.

Defendant then personally addressed the court, saying, "I guess there's supposedly—supposed to be some type of motions filed. There's never been told to me anything about a motion, and a motion that was already supposed to be filed. [¶] So what I got was he was supposed to go on his vacation and then when he comes back from his vacation, he will file the motion. But when I denied the continuance for him, I didn't want to slow anything down. I wanted to continue. Then there was a problem. There was never a problem until I denied him—until you denied him the vacation. [¶] I feel—if he feels like he can't represent me, then I feel I can represent myself and continue my speedy trial. I want a speedy trial. That is what I want to do. And if I can't do it, I will represent myself and file my own motions for my speedy trial and we can come back Monday and continue. [¶] I don't feel like he is representing me to the fullest, trying to waive time."

The trial court responded that it found defense counsel was not seeking a continuance to go on vacation, but was instead doing so to allow the investigation to be completed and appropriate motions filed. The court then asked, "As far as your

statements that you can handle this case better yourself, you let me know. What do you want in this case?" Defendant replied, "I would like to continue my speedy trial and go pro per by myself. I would rather do it by myself and file my own motions because obviously the motions is the issue that is slowing me down. I feel I will be ready to file my own motions and do that by myself and go pro per."

The court then addressed defendant outside the presence of defense counsel regarding the written waiver of counsel form. The court denied defendant's request that his family members help him with matters on the form he did not understand, stating that there would be "a lot of stuff you won't understand. You don't get to call people and consult with them, especially when you are in custody waiting for your court hearing. [¶] So do you still want to go pro per?" Defendant said he did. After defendant completed the form, he told the court that he understood and agreed with everything on the form and had no questions. After the court advised defendant of the dangers and disadvantages of representing himself, defendant said he still wished to do so. The court granted his request and appointed standby counsel and an investigator. Defendant reiterated that he wished to have his trial within the statutory period.

On the second day of jury selection, defendant changed his mind about self-representation, and standby counsel took over his representation for the remainder of the trial.

Defendant contends that the trial court erred by failing to conduct an in camera hearing to determine whether defendant's complaints warranted a substitution of appointed counsel. He claims he "made it clear that he was only requesting pro per status because he believed that appointed counsel had failed to diligently prepare for trial, was seeking a continuance that would result in a delay in trial beyond the statutory deadline so that he could take a vacation, and was dishonest with the court in his characterization of his communications with [defendant]." An accurate reading of the record belies these claims.

When a defendant asserts that appointed counsel is inadequately representing him and asks the court to appoint another attorney, the court must allow the defendant to explain the basis of his request and state specific instances of allegedly poor representation. (*Marsden*, *supra*, 2 Cal.3d at p. 124.) After providing the required hearing, the trial court then has discretion in deciding whether to replace counsel. "'A defendant is entitled to relief if the record clearly shows that the appointed counsel is not providing adequate representation or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result.'" (*People v. Taylor* (2010) 48 Cal.4th 574, 599.)

To impose a duty of inquiry on the trial court, "there must be 'at least some clear indication by defendant that he wants a substitute attorney.'" (*People v. Mendoza* (2000) 24 Cal.4th 130, 157.) A request for self-representation does not trigger a duty to conduct a *Marsden* inquiry. (*People v. Bradford* (1997) 15 Cal.4th 1229, 1372–1373.)

Defendant gave no clear indication that he wanted a different attorney. Rather, he wanted his trial to go forward without a continuance, even if investigation and trial preparation were incomplete. Apart from counsel's desire for a continuance, defendant never expressed any dissatisfaction or disagreement with counsel. Indeed, defendant told the court, "There was never a problem until I denied him—until you denied him the vacation"; "I don't feel like he is representing me to the fullest, trying to waive time." Early on, the trial court raised the possibility of a substitution of counsel, and defendant did not say that he was interested in having a different attorney. Defendant's sole focus was on avoiding any continuance of his trial beyond the statutory period. When, in the second hearing, the court asked defendant what he wanted to do, defendant said he wanted to represent himself and have his "speedy trial." Nothing in defendant's numerous statements provided the court with any reason to suspect that defendant was dissatisfied with or had a conflict with counsel on any basis other than counsel's desire for a continuance, which the court fully explored. Accordingly, we conclude the court did not err by failing to hold a *Marsden* hearing.

Defendant further contends that his waiver of counsel was involuntary due to the purported *Marsden* error. Because there was no *Marsden* error, defendant repeatedly and unequivocally asserted his right of self-representation both before and after the court advised him of the dangers and disadvantages of self-representation, and nothing in the record suggests his waiver of counsel was anything other than completely knowing and voluntary, defendant's contention fails.

**2. Sufficiency of evidence**

Relying on *People v. Anderson* (1968) 70 Cal.2d 15 (*Anderson*), defendant contends that insufficient evidence supports the jury's findings that the attempted murders were deliberate and premeditated.

To resolve this issue, we review the whole record in the light most favorable to the judgment to decide whether substantial evidence supports the conviction, so that a reasonable jury could find guilt beyond a reasonable doubt. (*People v. Ceja* (1993) 4 Cal.4th 1134, 1138.) Substantial evidence is "'"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."'" (*People v. Tully* (2012) 54 Cal.4th 952, 1006.) We presume the existence of every fact supporting the judgment that the jury could reasonably deduce from the evidence and make all reasonable inferences that support the judgment. (*People v. Barnes* (1986) 42 Cal.3d 284, 303; *People v. Catlin* (2001) 26 Cal.4th 81, 139.) Where substantial evidence supports the verdict, we must affirm, even though the evidence would also reasonably support acquittal. (*People v. Towler* (1982) 31 Cal.3d 105, 118.)

Premeditation requires that the act be considered beforehand. Deliberation requires careful thought and weighing of considerations for and against the act. (*People v. Mayfield* (1997) 14 Cal.4th 668, 767.) These processes can occur very rapidly, even after an altercation is under way. (*Ibid.*; *People v. Sanchez* (1995) 12 Cal.4th 1, 34, disapproved on another ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) The extent of the reflection, not the length of time, is the true test. (*Mayfield*, at p. 767.)

Three types of evidence that typically support a finding of premeditation and

deliberation are planning activity, a prior relationship with the victim or conduct from which a motive could be inferred, and a manner of killing from which a preconceived plan could be inferred. (*Anderson*, *supra*, 70 Cal.2d at pp. 26–27.) But these categories are not prerequisites, merely guidelines to assist reviewing courts in assessing whether the evidence supports an inference that the killing or attempted killing resulted from preexisting reflection and weighing of considerations, rather than an unconsidered or rash impulse. (*People v. Young* (2005) 34 Cal.4th 1149, 1183.)

Defendant's possession of a loaded gun within reach in his car was evidence of planning, in that it showed advance consideration of the possibility of killing or attempting to kill someone while driving. (*People v. Villegas* (2001) 92 Cal.App.4th 1217, 1224 [gang member's plan to kill rival shown by carrying concealed gun and shouting gang name before shooting]; *People v. Wells* (1988) 199 Cal.App.3d 535, 540–541 [gang member's carrying of concealed handgun to dance showed intent and plan to kill any rival gang members encountered].) This is especially revealing when considered in light of defendant's gang-based inquiry of Hicks and Jones as they innocuously walked along the street, minding their own business. As Thompson testified, this inquiry, made in the territory claimed by the rival Pasadena Denver Lanes Bloods gang, was designed to identify members of rival gangs to attack. The jury could reasonably infer that defendant went into the territory of a rival gang looking for rival gang members, and had preplanned and equipped himself to shoot any rival gang members he found. This behavior also demonstrated defendant's motive, in that it supported an inference that he wanted to shoot rival gang members to benefit his gang, as the jury found for purposes of the gang enhancement. There was evidence that Hicks was a member of a gang that had been absorbed by the Pasadena Denver Lanes Bloods gang, notwithstanding his denial of gang membership. Even if Hicks and Jones were not gang members, the proper focus was defendant's belief—perhaps encouraged by Hicks's ambiguous, then hostile response—that they either were rival gang members or were showing disrespect to defendant's gang. The manner of the attempted murders also

supports an inference that defendant considered the possibility of killing Hicks and Jones, gave it careful thought, and weighed considerations for and against doing so. The very act of reaching for his loaded gun after Hicks responded to defendant's gang inquiry shows defendant considered the possibility of shooting Hicks and Jones. Significantly, Hicks and Jones walked away from defendant, and defendant had an opportunity to treat their departure as ending the confrontation, but he instead fired his gun, repeatedly, even as Hicks and Jones ran away from defendant's car. Viewed in the light most favorable to the judgment, substantial evidence supports the jury's finding that the attempted murders were willful, deliberate, and premeditated.

**DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

CHANEY, J.

JOHNSON, J.