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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON ST. PIERRE,

Defendant and Appellant.

B233738

(Los Angeles County
Super. Ct. No. BA352850)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Curtis B. Rappe, Judge. Affirmed.

William Hassler, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Lance E. Winters, Assistant Attorney General, Linda C. Johnson
and Michael Katz, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Jason St. Pierre appeals from a judgment following his convictions for attempted premeditated murder of Kenneth Williams and Dushawn Minor. He contends there was insufficient evidence to support the convictions and the gang enhancements. Finding no error, we affirm.

STATEMENT OF THE CASE

A jury found appellant guilty of two counts of attempted willful, deliberate, and premeditated murder (Pen. Code, §§ 187(a)/664)¹ and found true the special allegations that the offenses were committed for the benefit of, at the direction of, and in association with a criminal street gang with specific intent to promote, further, and assist in criminal conduct by a gang member (§ 186.22, subd. (b)(1)(c)), and that a principal personally used and intentionally discharged a handgun (§ 12022.53, subds. (c) & (e)(1)). The trial court sentenced appellant to two consecutive terms of life in prison with the possibility of parole with a minimum 30-year term of imprisonment, plus 50 years to life. On June 9, 2011, appellant filed a timely notice of appeal.

STATEMENT OF THE FACTS

A. *The Crime*

On February 10, 2009, victims Williams and Minor were involved in an altercation with appellant and a male gang member, who went by the moniker of “Evil.” While appellant and Williams wrestled each other, Evil fired several shots at Minor. Shortly thereafter, Williams was shot multiple times. Evil ran out through a side door, and appellant also ran away through that door. Appellant was arrested on suspicion of attempted murder the next morning.

¹ All further statutory citations are to the Penal Code.

The shooting occurred in territory claimed by the Rolling Forty Neighborhood Crips (RFNC) gang. Both victims were members of the Bounty Hunter Bloods, a Blood gang. Williams went by the moniker “KB,” and Minor by the moniker “Face.”

B. *The Eyewitnesses*

(1) *Sherika Boyd*

Immediately after the shooting, Boyd called 911. When police officers arrived, she told one of them that appellant, also known as “White Boy,” had shot Williams and Minor. At the police station later that night, she selected appellant’s picture from a photographic six-pack. She told the officers she was familiar with appellant, as they had been friends prior to the shooting. She identified a second, shorter, darker male (later identified as Evil) as being with appellant. The taped recording of the interview was played for the jury. In an interview on May 7, 2010, several days before trial, Boyd stated that she recalled it was Evil who shot Minor, and appellant who shot Williams.

At trial, Boyd testified that on the day of the shooting, she and her boyfriend, Williams, had several guests at their apartment, including Minor and Deandre Ross. Just prior to the shooting, she saw appellant walking back and forth in the hallway outside the apartment. Boyd testified she had known appellant for a couple of years, as “I used to see him in the building and he used to kick it with Kenneth Williams.” She also testified that appellant and Williams had been friends.

On this occasion, Boyd noticed that as appellant was walking back and forth outside her apartment, he repeated “On Forty Crip” several times in a loud and “mean” tone of voice. Williams and Minor then stepped outside to talk with appellant. Boyd followed behind; she wanted to tell Williams to return to the

apartment. Evil was present, standing with appellant in the hallway. Evil had a stocky build and a mustache, and wore a hat and black clothing. Williams asked, "Is it a problem?" Evil responded, "Yeah, it's a problem." Evil also stated, "K.B., you got a problem with the hood." Evil then shot Minor twice, and ran outside by a side door.

After Evil left, Boyd saw appellant and Williams wrestling by the stairway down the hall. Appellant pulled a black gun from his pocket, and shot Williams at least four times. Appellant then ran out the same door that Evil had used.

Boyd also testified about several attempts by Williams to dissuade her from testifying at trial, after Williams had been threatened with being beaten if Boyd testified.

(2) *Kevin Williams*

Williams was transported to the hospital for treatment of his wounds. While at the hospital, he was interviewed by the police. A recording of the interview was played for the jury. During the interview, Williams told the officers that prior to the shooting, he peeked his head outside his apartment and saw two men walking up the hallway -- a "tall light dude" and a "short bald-headed dude, a fat dude." He heard someone say, "You got a problem with the Forties," and he answered, "What?" Williams also stated that the "tall one" was the "aggressor" and had pointed a gun at him. Williams identified appellant as the "tall one" from a photographic six-pack, although he hedged that the person looked "similar but not quite." He also told the officers that he had never seen the suspect before that night.

At trial, Williams testified that on the night of the shooting, he and appellant were fighting when they heard gunshots. The shooter, "a short chubby dude," then fired several shots at the two men. Appellant tried to stop the shooting by

screaming, but the shooter laughed and continued shooting at the two men. Williams fell down, and the shooter ran away through a side door. After appellant helped Williams stand up, he ran away and Williams ran toward his apartment.

Williams also stated that when he gave his statements to the police at the hospital, he was upset, under the influence of drugs, and had heard what Boyd had said about the shooting. He had denied knowing appellant because he did not want to get involved in the case. Williams denied being threatened before trial, or attempting to dissuade Boyd from testifying.

Williams testified he had a conviction for selling narcotics in territory claimed by the RFNC gang. He believed that he was shot because he was selling crack cocaine in the “Forty hood,” thereby disrespecting the RFNC.

(3) *Deandre Ross*

Ross was interviewed by police officers on the night of the shooting. A recording of the interview was played for the jury. During the interview, Ross told the officers that the shooter was tall and light-skinned. He also selected appellant’s photograph from a six-pack.

At the preliminary hearing on April 23, 2009, Ross again identified appellant as the person who shot Williams. He further testified that after KB and appellant had a “face-to-face” confrontation, he saw appellant pass a black gun to a heavyset male. The man fired it, and gave it back to appellant.

At trial, Ross contradicted his prior statements. He testified that after seeing Williams fighting with appellant, he saw the heavyset man shoot Minor. Because Ross ran into the apartment, he did not see Williams getting shot afterwards.

When confronted with his prior statements, Ross testified he was intoxicated when he identified appellant as the shooter on the night of the incident, and claimed his identification of appellant was coerced. He further testified that his

identification of appellant at the preliminary hearing was not truthful; the police officers had told him to lie.

C. *The Gang Expert Witness*

Officer Matthew Courtney testified as an expert on the RFNC gang. He testified about its membership, its criminal activities, and its claimed territory. He also testified that gangs were protective of their territory, and proud that they had fought rival gangs and intimidated citizens to claim their territory. He further testified that as a Crip gang, all Blood gangs were RFNC's rivals.

Officer Courtney opined that appellant was an RFNC gang member, based upon speaking with other law enforcement officers who had personal contacts with him, and to whom appellant had admitted RFNC membership.

After being presented with a hypothetical based on facts similar to those in this case, Officer Courtney opined that the shooting was committed for the benefit of the RFNC gang for several reasons. First, by yelling out "On Forties," before shooting a rival gang member, witnesses would be intimidated and less inclined to cooperate with law enforcement in RFNC-related crimes; that, in turn, would strengthen the gang's stranglehold on the community. Second, a rival gang member's sale of narcotics in RFNC territory was an "extremely disrespectful" act that necessitated a violent response in order to maintain RFNC's reputation. Third, the shooting increased the gang's reputation because it showed even a preexisting friendship or relationship with an RFNC gang member did not protect a nonmember who "crossed that line" by selling narcotics in RFNC territory. Fourth, the fact that witnesses recanted showed the far-reaching violent reputation of the gang for dealing with snitches. Finally, the shooter's own reputation within the gang would benefit from shooting at rival gang members.

D. *Defense*

Appellant testified he had been an RFNC gang member for approximately seven years, but denied admitting his gang membership to police officers. Prior to the shooting, he had told other RFNC gang members that he wanted to leave the gang. He denied shooting Williams or Minor, or assisting anyone in the shooting of the two men. He further denied knowing who shot them.

Daniel Woolsey, an investigator with the Alternate Public Defender's Office, testified he interviewed Ross on March 13, 2009. During the interview, Ross stated that a heavysset male shot at appellant and Williams. Ross told Woolsey that he had mistakenly identified appellant as the shooter in the six-pack because he had been confused.

DISCUSSION

Appellant contends there was insufficient evidence to support his convictions on the attempted murder counts, or to support the gang enhancement allegations. We disagree.

A. *Evidence was Sufficient to Support the Convictions for Attempted Murder.*

“The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]” (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

“Identification of the defendant by a single eyewitness may be sufficient to prove the defendant's identity as the perpetrator of a crime. [Citation.] Moreover, a testifying witness's out-of-court identification is probative for that purpose and can, by itself, be sufficient evidence of the defendant's guilt even if the witness

does not confirm it in court. [Citations.]” (*People v. Boyer* (2006) 38 Cal.4th 412, 480.)

Here, the record was sufficient for a rational jury to find appellant guilty beyond a reasonable doubt. First, Boyd consistently identified appellant as the shooter of Williams -- on the night of the incident, during a pretrial interview, and at trial. Boyd’s testimony alone was sufficient to support the jury’s determination that appellant attempted to kill Williams. Second, Ross identified appellant as the shooter on the night of the incident, as well as at the preliminary hearing. Ross further testified that appellant handed a gun to his companion to shoot Minor. This testimony was sufficient to support the jury’s finding that appellant aided and abetted in the shooting of Minor. The fact that several witnesses changed their testimony at trial is immaterial; the jury was free to conclude they had told the truth before and were now intimidated. Thus, there was sufficient evidence to support the convictions.

B. *Evidence was Sufficient to Sustain the Gang Enhancement Allegations.*

Appellant also challenges the sufficiency of the evidence to support the gang enhancement allegations. In reviewing this claim, we note that expert testimony may be used to prove the elements of a gang enhancement allegation. (See, e.g., *People v. Gardeley* (1996) 14 Cal.4th 605, 619 [from expert testimony that assault was ““classic”” gang activity that frightened residents and secured gang’s drug-dealing stronghold in the area, jury could reasonably conclude charged offense was committed for benefit of gang and with specific intent of promoting its criminal activities under section 186.22, subd. (b)(1)]; *People v. Vazquez* (2009) 178 Cal.App.4th 347, 351, 354 [reasonable jury could infer from expert testimony that violent crimes increased respect for gang and intimidated neighborhood residents, and from other evidence in record that murder was committed with

specific intent to promote gang's criminal activities]; *People v. Ferraez* (2003) 112 Cal.App.4th 925, 930- 931 [jury could reasonably infer crime was gang-related from expert testimony coupled with other evidence].)

Here, substantial evidence supported the jury's finding that the attempted murders were committed to promote the RFNC gang. Appellant and Williams were members of rival gangs. Williams was in RFNC territory. Williams himself thought he was shot for selling crack cocaine in RFNC territory. Appellant said "On Forty Crip" in a loud voice outside Williams's apartment, and Williams initially told police he heard someone say, "You got a problem with the Forties" just before he was shot. Detective Courtney, a gang expert, testified to the penchant of gang members to respond violently to conduct that disrespects them, and confirmed that the shooting of a rival gang member to discourage him from poaching on gang territory would increase respect for the gang and intimidate rival gang members and the community at large. Accordingly, there was sufficient evidence to support the gang enhancement allegations.

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.