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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

RALPH LOPEZ,

Defendant and Appellant.

B267401

(Los Angeles County
Super. Ct. No. BA409194)

APPEAL from a judgment of the Superior Court of Los Angeles County, Charlaine F. Olmedo, Judge. Affirmed as modified.

Allen G. Weinberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris and Xavier Becerra, Attorneys General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell and Peggy Z. Huang, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Ralph Lopez appeals the judgment following his conviction for murder, assault with a firearm, and several counts of attempted premeditated murder, along with various firearm and gang enhancements. He argues insufficient evidence supported the jury's finding that he caused great bodily injury with a firearm as required to impose the 25-years-to-life enhancement in Penal Code section 12022.53, subdivision (d) for one of the attempted murder counts. We disagree. He also contends—and respondent agrees—the 10-year gang enhancements must be stricken and the abstract of judgment must be corrected. We will strike the gang enhancements and direct the trial court to issue a corrected abstract of judgment. We affirm the judgment as modified.

PROCEDURAL BACKGROUND

After a shooting outside a strip club in Los Angeles, appellant was charged and convicted by jury of one count of first degree murder (Pen. Code, § 187, subd. (a); count 1);¹ one count of assault with a firearm (§ 245, subd. (a)(2); count 2); and five counts of attempted willful, deliberate, and premeditated murder (§§ 187, subd. (a), 664; counts 3-7)). The jury also found true numerous firearm and gang enhancements, which we will discuss in more detail below as necessary. The trial court sentenced him to 230 years to life in state prison. He timely appealed.

FACTUAL BACKGROUND

On the evening of February 24, 2013, Kimberly Leiva and her three friends went to Sam's Hofbrau, a strip club in Los Angeles. They met Deanna Bribiesca and murder victim Martin

¹ All undesignated statutory citations are to the Penal Code unless otherwise noted.

Dominguez there. Leiva and one friend left the club at 1:50 a.m. and played music in their car; their other friends joined them shortly thereafter. About 10 minutes later, Bribiesca and Dominguez arrived. Leiva and her friends played music and danced near and on the car while Bribiesca and Dominguez talked to each other.

Appellant arrived and walked past Leiva and her friends toward Dominguez. He tapped Dominguez on the elbow, and they walked away together. When they stopped, Leiva noticed Dominguez appeared angry. Both Dominguez and appellant took a step back, and appellant pulled out a gun and shot Dominguez in the neck, killing him. He then shot at Leiva and the others as he ran away. He jumped into the backseat of a truck parked nearby.

Fearing he would return, Leiva and her friends drove to a gas station two blocks away and called the police. When they returned to the scene five to 10 minutes later, the police had arrived.

Los Angeles Police Detective Leonardo McKenzie investigated the crime. At the scene, he noticed tattoos on Dominguez related to the Laguna Park Vikings street gang. He also obtained security video from nearby businesses showing the shooting. And he recovered bullet casings that were determined to come from the same weapon.

Detective McKenzie learned Bribiesca was at the hospital. About three to four hours after the shooting, he talked with her in the emergency room. He observed a “[s]ingle gunshot wound to the left leg.” He provided no other testimony as to the nature or extent of her injury and no other medical evidence was

introduced at trial. Neither prosecution nor defense investigators could locate Bribiesca, and she did not testify.

Appellant was eventually arrested and his residence searched, where officers found several items of clothing related to the Indiana Dukes street gang. In a police interview, appellant admitted he was a member of the Indiana Dukes street gang. He initially denied being at the strip club on the night of the shooting, but eventually admitted he had been there with his cousin and uncle. He then denied knowing anything about the shooting, but later admitted he was involved. He said he had heard Dominguez threaten to kill him or his family. He did not know Dominguez and had never seen him before. He said he was driving with his cousin when Dominguez said, "Bitch ass fools." Fearing for his life, appellant got out of the truck and shot Dominguez in the neck. He then fired five or six shots at the group standing outside the parked car. He got back into his cousin's truck and went home. He said he got rid of the gun after the shooting. At the interview, he showed Detective McKenzie his gang tattoos. He denied knowing Dominguez was a gang member, denied hearing anyone say "where you from," and denied announcing his own gang name.

A Los Angeles County deputy sheriff testified as a gang expert. After explaining general information about street gangs, he testified he was familiar with the Indiana Dukes street gang, including its rivalry with the Laguna Park Vikings street gang. He opined appellant was an active member of Indiana Dukes. In response to a hypothetical tracking the facts of the case, he opined the shooting was committed for the benefit of Indiana Dukes and in furtherance of the gang's criminal activity.

DISCUSSION

1. Sufficient Evidence Supported the Great Bodily Injury Firearm Enhancement

Appellant claims insufficient evidence supported the jury's true finding that Bribiesca's gunshot wound constituted "great bodily injury" as required for the 25-years-to-life firearm enhancement attached to count 3, the attempted murder count in which she was named. (§ 12022.53, subd. (d).) We disagree.

In reviewing a claim of insufficient evidence, " "we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." ' ' (*People v. Wilson* (2008) 44 Cal.4th 758, 806.) " 'We review the sufficiency of the evidence to support an enhancement using the same standard we apply to a conviction. [Citation.] Thus, we presume every fact in support of the judgment the trier of fact could have reasonably deduced from the evidence.' " (*Ibid.*)

Section 12022.53, subdivision (d) imposes an additional consecutive term of imprisonment of 25 years to life if, while committing a qualifying felony, the defendant "personally and intentionally discharges a firearm and proximately causes great bodily injury, as defined in Section 12022.7, or death, to any person other than an accomplice." Section 12022.7, subdivision (f) defines " 'great bodily injury' " as a "significant or substantial physical injury."

"Proof that a victim's bodily injury is 'great'—that is, significant or substantial within the meaning of section 12022.7—is commonly established by evidence of the severity of

the victim's physical injury, the resulting pain, or the medical care required to treat or repair the injury." (*People v. Cross* (2008) 45 Cal.4th 58, 66.) The statute does not require the victim to suffer permanent, prolonged, or protracted disfigurement, impairment, or loss of bodily function. (*People v. Escobar* (1992) 3 Cal.4th 740, 750.) " " "A fine line can divide an injury from being significant or substantial from an injury that does not quite meet the description." ' [Citations.] Where to draw that line is for the jury to decide." (*Cross, supra*, at p. 64.) As a result, " " "[i]f there is sufficient evidence to sustain the jury's finding of great bodily injury, we are bound to accept it, even though the circumstances might reasonably be reconciled with a contrary finding." ' " (*Escobar, supra*, at p. 750.)

While the evidence in this case may not have been overwhelming, we find it was sufficient to sustain the jury's finding of great bodily injury. Detective McKenzie testified that Bribiesca had suffered a "[s]ingle gunshot wound to the left leg." She was taken to the hospital, where Detective McKenzie spoke with her several hours later. The prosecutor also commented to the jury in closing: "Also hurt, though, was Deanna Bribiesca. She was shot in the leg. And again, you will have the video if you want to see it. When she comes back to the scene, she is limping around there. And you will see the ambulance." The "video" mentioned by the prosecutor was security footage in the area of the shooting. We have reviewed the video, and Bribiesca can indeed been seen limping. It was up to the jury to decide how serious that limp appeared to be and that the video, coupled with the other facts in the record, demonstrated she suffered great bodily injury.

This record was sufficient to support the jury's finding. (Cf. *People v. Miller* (1977) 18 Cal.3d 873, 878, 883 [defendant shot victim in chest as they struggled over the gun, and shot him again, the bullet "piercing" his right arm]; *People v. Lopez* (1986) 176 Cal.App.3d 460, 465 [two victims shot; one fell to the ground, was disoriented, and screamed, and the other felt "fire" when shot in the thigh]; *People v. Lopez* (1982) 131 Cal.App.3d 565, 573 & fn. 2 [multiple victims shot multiple times in limbs and vital organs and many were treated at hospital].)

2. Stayed Gang Enhancements Must Be Stricken

For counts 1 and 3 through 7, the court imposed and stayed gang enhancements pursuant to section 186.22, subdivision (b)(1)(C). The parties agree this was error. Section 186.22, subdivision (b)(1)(C) does not apply when an otherwise qualifying violent felony is "punishable by imprisonment in the state prison for life." (§ 186.22, subd. (b)(5); see *People v. Lopez* (2005) 34 Cal.4th 1002, 1004.) Instead, section 186.22, subdivision (b)(5) applies, requiring a defendant to serve a minimum of 15 years before parole eligibility. The court here sentenced appellant to indeterminate terms for each of counts 1 and 3 through 7, so the 15-year minimum parole eligibility limitation in section 186.22, subdivision (b)(5) applies. Thus, the stayed gang enhancements must be stricken.

3. Abstract of Judgment Must Be Corrected

The parties agree the abstract of judgment incorrectly indicates *two* 25-years-to-life enhancements were imposed pursuant to section 12022.53, subdivision (d) for count 1 (for a total of 50 years to life), when only *one* 25-years-to-life enhancement was imposed. We will order the abstract of judgment corrected accordingly.

DISPOSITION

For appellant's sentence, the stayed section 186.22, subdivision (b)(1)(C) enhancements for counts 1 and 3 through 7 are stricken. The abstract of judgment must be modified to delete one of the 25-year-to-life enhancements pursuant to section 12022.53, subdivision (d) for count 1. The trial court is directed to forward a corrected abstract of judgment to the Department of Corrections and Rehabilitation.

As modified, the judgment is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.