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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.

ANDRE VINCENT JACKSON,

Defendant and Appellant.

B267759

(Los Angeles County  
Super. Ct. No. TA133301)

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

Gail Harper, 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, Steven D. Matthews and Robert C. Schneider, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Andre Vincent Jackson of premeditated murder (count 1; Pen. Code, § 187, subd. (a)),<sup>1</sup> and found true that he personally used and discharged a firearm causing great bodily injury and death and that a principal personally used and discharged a firearm causing great bodily injury and death (§ 12022.53, subds. (b), (c), (d), (e)(1)), and that the murder was gang-related (§ 186.22, subd. (b)). The jury also convicted Jackson of attempted premeditated murder (count 2; §§ 664; 187, subd. (a)) and found true that he and a principal personally used and discharged a firearm (§ 12022.53, subds. (b), (c), (e)(1)), and that the attempted murder was gang-related (§ 186.22, subd. (b)). The trial court sentenced Jackson to a term of 25 years to life on his murder conviction in count 1, plus a consecutive term of 25 years to life for the finding that he personally discharged a firearm causing death. The court sentenced Jackson to a consecutive term of life on his attempted murder conviction in count 2, plus 20 years for the finding that he personally discharged a firearm.

On appeal, Jackson claims the evidence is insufficient to sustain the gang findings, and that he was prejudiced by ineffective assistance of trial counsel. We affirm the judgment.

## **FACTS**

### ***The Shooting***

On November 25, 2013, Jarrett Crump (the murder victim) picked up Angela M. (the attempted murder victim) to go out for some food. As Crump stopped his green Infiniti at the intersection of Hoover and Century, a dark SUV pulled alongside Crump's car, and a man in the SUV leaned out of the passenger

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

side window and began knocking on the driver's side window of Crump's car and yelling at him. Crump drove away, and the SUV followed Crump, weaving through traffic. When Crump stopped at the intersection of Century and Vermont, a man with a gun exited the SUV and began shooting at Crump's car.<sup>2</sup> Crump died from a fatal gunshot to his neck, and a bullet grazed Angela M. in the shoulder.

A witness who had been driving behind the SUV saw the beginning of the shooting before ducking down. The witness memorized the SUV's license plate number: 6SUF397. The SUV belonged to Kenneth Clay.<sup>3</sup>

On November 26, 2013, the day after the shooting, Los Angeles Police Department Officer Chris Reza and his partner took appellant Jackson and Kenneth Clay into custody during a traffic stop of Clay's SUV. The officers called detectives to the scene and assisted in a search of the SUV. The search recovered a backpack from the SUV with Clay's name on it. Inside the backpack was a loaded .45 caliber semiautomatic handgun and

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<sup>2</sup> At trial, a criminalist from the Los Angeles Police Department testified that she collected multiple bullets and bullet fragments from inside Crump's Infinity. In all, the criminalist observed 11 bullet impacts to Crump's vehicle, from which she determined that there were three "pathways" or trajectories of shots fired at the vehicle.

<sup>3</sup> Kenneth Clay was charged and tried with appellant Jackson. Clay's trial counsel argued to the jury Clay was so high on cocaine that he "was out of it," and had no idea what was going on, and that he had not been driving the SUV. Further, that there was not actual evidence that he was a gang member. The jury acquitted Clay, and he is not involved in the present appeal.

Clay's prescription pill bottles. Officers also recovered cell phones from Jackson and Clay at the time they were taken into custody.

The ensuing investigation led homicide detectives to Kenneth Clay's sister, Dorothy "Feather" Clay, and to an informant, T.F. During a recorded interview with homicide detectives in October 2014, T.F. identified himself as being "from 94 Hoover," and said that he had been with Jackson, "KC" and "Feather" on the day of the shooting, driving around in KC's SUV, getting high on cocaine, when the group saw "a Hispanic dude from Main Street." Feather said she saw a green Infiniti, and stated, "Oh, that's Mondo right there. That's Mondo." T.F. said Jackson was waving a .40 or .45 caliber handgun around. T.F. told Jackson, "Don't go. You going to be in jail." T.F. asked to be let out of the car, and they dropped him off before the shooting. According to T.F., Jackson admitted the next day that he shot two people in a green Infiniti because he thought he was a member from the rival 98 Main Street Mafia Crips gang named Armando Felix, who drove a similar green Infiniti. According to T.F., Jackson said they chased the car, and, when it stopped at a red light at Century and Vermont, Jackson got out, approached the Infiniti, and "started shooting in . . . the driver's side." Jackson "said he hit a girl, and he killed, and he know he shot out the boy." Jackson said it was the wrong person, and that "Feather's stupid ass told me it was Mondo." According to T.F., Jackson said, "But . . . when I got up to the car, it wasn't him. I just shot it up anyway."

Feather testified extensively at Jackson's trial under a grant of immunity.<sup>4</sup> Reduced to its essence, Feather testified that she was in her brother's SUV with her brother and Jackson when they saw a green Infiniti. Her brother was driving, and he chased the Infiniti until it stopped at a red light. Feather testified that she saw Jackson shoot into the Infiniti. When Jackson got back in the SUV, he said words to the effect that he "shot them, and that they were dead." He referred to the shooting victims as "skirts," meaning members of the 98 Main Street gang.

### ***The Criminal Case***

In July 2014, the People filed an information jointly charging appellant Jackson and Kenneth Clay with murder and attempted murder. The charges against both defendants were tried to a jury in December 2014, at which time the prosecution presented evidence establishing the facts summarized above. In addition, the prosecution presented testimony of a gang expert, Los Angeles Police Department Officer Richard Delgado, who explained gang culture generally, and opined that that Jackson was an active member of the Hoover gang. Officer Delgado also testified that the "Hoover Criminal Gang" (the Hoovers) and the "98 Main Street Mafia Crips" gang (the Main Streeters) were violent rivals. In response to a hypothetical question mirroring the facts of the shooting involved in Jackson's

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<sup>4</sup> When Feather initially spoke with police, she referred to Jackson by a moniker that was not associated with him. When shown a picture of Jackson, Feather told the police that she was just familiar with him from seeing him around. She did not identify him as the driver or shooter. In a later interview, she identified Jackson and she testified at trial.

case, Officer Delgado offered his opinion that the shooting would have been committed for the benefit of the Hoovers. We discuss Officer Delgado's gang testimony more fully below.

Jackson presented a single witness in his defense, Stephanie S., who testified that she saw a man on the street shooting at the victims' car, but did not see where the shooter had come from or where he went after the shooting. She could not identify Jackson as the shooter. When asked to look around the courtroom and say whether the shooter was present, Ms. S. looked and said that shooter was not there. In argument, Jackson's counsel urged to the jurors that the "entire case really comes down to [Feather]. Without [Feather], nothing else really matters." In this vein, counsel argued that the evidence showing that Jackson was the shooter failed to prove he was guilty beyond a reasonable doubt.

The jury returned verdicts finding Jackson guilty as charged and the trial court thereafter sentenced Jackson as noted above.

Jackson timely appealed.

## **DISCUSSION**

### **I. The Gang Enhancement**

Jackson contends the evidence is insufficient to support the true finding on the gang enhancement allegations. We disagree.

The standard 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.) Accordingly, in addressing a challenge to the sufficiency of the evidence to support a gang enhancement finding under section 186.22, subdivision (b), we review the

entire record in the light most favorable to the jury's 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 that the trier of fact reasonably could have deduced from the evidence. (*Ibid.*)

Jackson does not question that the evidence was sufficient to establish that he was an active member of the Hoovers gang, and that the Hoover gang is a criminal street gang as defined in the gang enhancement statute. His contention on appeal is that the prosecution failed to prove that the charged murder and attempted murder were “committed for the benefit of, at the direction of, or in association with any criminal street gang . . . .” (§ 186.22, subd. (b)(1).)

This is the heart of Jackson's argument: “[T]here was only speculation, not evidence, that [the shooting] was a gang crime. [The gang expert] offered nothing but bald conclusions that [Jackson] . . . acted to benefit the Hoover gang. While drive-by shootings are frequently gang offenses, this shooting gave little indication that was the case. No one in Clay's car yelled out any gang name, threw any gang signs or left any gang-related graffiti. The victims had no gang affiliation. The usual gang challenge, ‘Where you from?’ was not made. There was no evidence of anything done at the scene to demonstrate to the community or local gangs that the shooting was for the benefit of the Hoover gang. Without such evidence, it is unclear how the offense can be said to have benefitted the gang by letting its rivals and members of the public or ‘community’ know that Hoover committed the offense. [¶] . . . [¶] Since the expert's testimony concerning [the

shooting] was unsupported by facts and was essentially speculative, there was insufficient evidence that the crimes were committed for the benefit of a criminal street gang or that [Jackson] had the ‘specific intent to promote, further, or assist in any criminal conduct by gang members’ (§ 186.22, subd. (b)(1)).” In short, Jackson essentially argues that a gang member sometimes commits a crime just for his own benefit, not his gang’s benefit.

While we agree with the abstract proposition that a gang member sometimes commits a crime for reasons other than to benefit his gang, we find Jackson’s argument unpersuasive here. The evidence showed Jackson chased down and shot at a car being driven by a person whom he believed to be a member of a rival gang.<sup>5</sup> This evidence, when examined together with the backdrop of the testimony of the prosecution’s gang expert, Officer Delgado, plainly established that the murder of Crump and attempted murder of Angela M. was “committed for the benefit of . . . [the Hoover] criminal street gang.” (§ 186.22, subd. (b)(1).)

During Officer Delgado’s testimony, he explained that in gang culture “respect” is very important to gang members, and that any demonstration of disrespect will result in an immediate and violent response. Further, the more violent a crime, the more a gang member’s respect and reputation in his or her gang

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<sup>5</sup> Before and after Jackson shot at the victims’ car, he referred to the targets as “skirts.” He specifically believed he was chasing a 98 Main Street gang member, Armando Felix, known as “Mondo,” who drove a green Infiniti, until just prior to murdering the victim. He thought he was chasing a “boy from Main Street.” After killing the victim, he proudly stated that “the Main Street is dead. I got him,” and “I got that skirt.”



is enhanced. Given this culture, when a gang member enters a rival gang's territory, it is considered a "huge sign of disrespect," and the reaction to seeing a gang member in a rival's territory would be expected to be violent.

Officer Delgado explained that the Hoover gang and the 98 Main Street Mafia gang were violent rivals. Further, Hoover gang members disparagingly refer to Main Street Mafia gang members as "miniskirts" or "skirts." The intersection of Vermont and Century, where the street shooting in this case occurred, is within the Hoover gang's territory.

Given this evidence, a jury could reasonably find that when a gang member chases down and shoots a rival gang member in an area of the community claimed as the territory of the shooter's gang, the shooting is a crime committed for the benefit of the shooter's gang. At a minimum, one less enemy gang member means one less threat to the shooter's gang. Accordingly, the jury at Jackson's trial could reasonably have found that when Jackson, a member of the Hoover gang, shot at a car perceived to belong to a rival, enemy gang member, he committed the shooting for the benefit of the Hoover gang.

The only true twist in Jackson's present case is that he shot and killed a person who, in fact, turned out not to be a rival gang member, but rather an innocent bystander in the wrong place at the wrong time. In other words, Jackson made a mistake of fact in targeting his shooting.

None of the cases cited in any of the briefs are directly on point with this issue. However, we are not persuaded to find that the circumstance presented in Jackson's case compels the conclusion that the shooting was not committed for the benefit of the Hoover's gang. We find that when a gang member commits a

crime under the belief that he is benefiting his gang, then he has committed that crime “for the benefit of” his gang. Jackson’s arguments in his briefs fail to persuade us that the gang statutes must be construed to insulate a gang member from enhanced punishment because he “mistakenly” kills an innocent person while deliberately intending to kill a rival gang member. It is the act of targeting a perceived enemy gang member that supports a finding of a benefit to the shooter’s gang.

Jackson’s gang motive -- to shoot at the car of a rival gang member found in the its territory -- was the motive that caused the murder of victim Crump and the attempted murder of Angela M. The gang enhancement statute requires proof that a defendant intended to promote, further or assist in criminal conduct by gang members, and the evidence overwhelming showed that such an intent existed here. Jackson’s arguments do not persuade us that a gang enhancement is inappropriate in this case. His culpability as a gang member who committed a gang-related crime is evident.

## **II. The Ineffective Assistance of Counsel Claim**

Jackson contends his convictions must be reversed because he suffered prejudice as a result of various ineffective errors and omissions by his trial counsel. We disagree.

To establish a claim of ineffective assistance of counsel, a defendant must show (1) that his counsel’s performance fell below an objective standard of reasonableness under prevailing professional norms and (2) that prejudice occurred, in that there is a reasonable probability that, but for counsel’s failings, the result of the defendant’s case would have been more favorable. (See generally, *Strickland v. Washington* (1984) 466 U.S. 668, 687-688; *People v. Cudjo* (1993) 6 Cal.4th 585, 615.) On appeal, a

reviewing court presumes that a defendant's trial counsel provided adequate assistance and exercised reasonable professional judgment in making trial decisions. (*People v. Holt* (1997) 15 Cal.4th 619, 703.) With regard to the burden to show a reasonable probability of a different result, "[i]t is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding." (*People v. Ledesma* (1987) 43 Cal.3d 171, 217-218.)

Jackson claims his trial counsel was ineffective for failing to object to the following three items of evidence: (1) The gang expert's testimony explaining that Jackson had tattoos on his body signifying that he was a "killer;" (2) The gang expert's testimony concerning "field interview cards" filled out by other police officers; and (3) Dorothy Feather Clay's testimony that Jackson was her pimp. Jackson's arguments do not persuade us that reversal is warranted.

#### *1. "Killer" Gang Tattoos*

As we noted above, Los Angeles Police Department Officer Richard Delgado testified as the prosecution's gang expert. Officer Delgado testified that he is a gang officer assigned to the Southeast Area Gang Enforcement Detail, and that he has had "thousands" of contacts with gang members. The Hoover gang, and the Main Street gang are two rival gangs within Officer Delgado's area of responsibility.

Officer Delgado testified that it was his opinion, based on a number of factors, that Jackson was a member of the Hoover gang. Among the factors that Officer Delgado took into consideration were Jackson's tattoos. Officer Delgado explained that Hoover gang members have adopted the Houston Astros symbol of an "H" within a star as their gang symbol. Officer

Delgado observed that Jackson had multiple tattoos signifying his loyalty to the Hoover gang. These tattoos included the letters “H” and “C” on his shoulders and stomach; “HCG” on his hand and back of his neck, the HCG hand sign on his forearm, thumb, and a star on his abdomen. In addition, Jackson had star tattoos all over his body, including his face.

Officer Delgado further noted that Jackson had tattoos on his forearm as follows: “98 K,” “DLB K.” and “ECC K.” Officer Delgado explained that those tattoos represented the initials of three rival gangs followed by the letter “K,” symbolizing that Jackson was a “killer” of those gangs. It is this “killer” tattoos testimony to which Jackson first faults his counsel.

We find no ineffective assistance of counsel for failure to object to Officer Delgado’s testimony about the tattoos because a reasonable attorney could have decided either that an objection would be overruled or that, even if sustained, would not have been particularly beneficial to the defense. In other words, we see nothing here but a reasonable trial tactic that will not support an ineffective assistance of counsel claim. (See, e.g., *People v. Hillhouse* (2002) 27 Cal.4th 469, 502 [“deciding whether to object is inherently tactical, and the failure to object will rarely establish ineffective assistance”].) When, as here, the record does not foreclose a reasonable explanation for a trial lawyer’s actions, it will provide “no basis upon which to find deficient performance by trial counsel.” (*People v. Stewart* (2004) 33 Cal.4th 425, 463.)

In any event, the shooting involved in Jackson’s case was inexplicable, and required expert testimony to explain why the shooter went after a person in cold blood in broad daylight simply for driving down the street. Evidence of the violent culture of

gangs plainly was admissible to explain an otherwise senseless attack. Further, the nature of Jackson's tattoos was admissible to fit him into the framework of the gang culture, and to show his commitment to his gang. (*People v. Albillar* (2010) 51 Cal.4th 47, 62.) We find the evidence explaining his "killer" tattoos was admissible for this purpose. In *People v. Ochoa* (2001) 26 Cal.4th 398, the California Supreme Court ruled that a trial court did not abuse its discretion in allowing evidence that the defendant had a forehead-tattoo of the number "187," which a gang expert testified referred to the Penal Code section for murder. (*Id.* at p. 437.) We do not find Jackson's "killer" tattoos to be of a materially different nature. An objection by trial counsel likely would have been overruled, and properly so.

Jackson argues an objection would have succeeded because "[his] 'killer' tattoos are analogous to rap lyrics, in that they are works of art and fantasy, and were created for the specific purpose of inflaming other people's emotions . . . [and were] unnecessary to establish [his] gang membership." For this reason, argues Jackson, the evidence of his "killer" tattoos was more prejudicial than probative. We disagree. At most, Jackson sets out an argument that there is an alternative reason for the tattoos on his body. That does not mean the evidence was inadmissible; instead, it means he had an argument to counter the prosecution's. In other words, his arguments go to the weight of the evidence and not its admissibility. For the reasons we explained above, we find the evidence was admissible to show the strength of Jackson's commitment to the gang culture, and his counsel was not ineffective for failing to object to their admissibility.

Finally, assuming that Jackson's counsel should have objected to the "killer" tattoos evidence, and that the objection would have been granted, we see no prejudice from the introduction of the "killer" tattoos evidence. In this case, neither Officer Delgado nor the prosecutor ever suggested that the killer tattoos were evidence that Jackson committed the shooting. Further, the remainder of the evidence concerning Jackson's gang membership, and the violent culture of gangs more generally, was plainly admissible as the prosecution had the burden of proof on the gang enhancement allegation.<sup>6</sup> In the overall context of Jackson's case, the addition of the "killer" tattoos evidence was not unduly prejudicial.

## *2. Field Identification Cards*

During his testimony regarding Jackson's gang membership, Officer Delgado referred to information concerning Jackson's gang affiliation and monikers as reflected in 34 field identification cards (FI cards). Officer Delgado explained that FI cards are routinely collected by police officers in the course of their duties, and that they contain names and driver's license numbers or other "I.D." numbers of people with whom officers have encounters. When a person identifies as a gang member, the person's stated gang affiliation and gang monikers is recorded. All FI cards are retained; FI cards for gang members are kept separately in a special "cabinet room." Officer Delgado

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<sup>6</sup> There are passing statements in both parties' briefs on appeal that Jackson "admitted" at trial that he was a gang member, but we do not see such an admission. There was evidence that Jackson had stated his gang membership outside of the courtroom, but we see no concession offered by Jackson during his trial to any element of the gang enhancement allegation.

did not testify about any specific information contained in any particular one of the 34 FI cards with gang information about Jackson, but explained generally, that Jackson was identified as a member of the Hoover gang in all 34 FI cards. However, when the prosecution rested its case, all 34 FI cards were admitted into evidence without an objection.

In his opening brief, Jackson argued that this evidence described above was subject to exclusion as “testimonial evidence” under *Crawford v. Washington* (2004) 541 U.S. 36, and that his trial counsel was ineffective for not making an objection accordingly. Jackson filed his opening brief shortly before the California Supreme Court decided *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*), clarifying to some extent the rules governing hearsay and gang expert testimony where testimonial evidence is involved.<sup>7</sup> Even assuming that Jackson’s trial counsel should have objected to admitting the FI cards, we find no prejudice. Officer Delgado testified that he had extensive contacts with gang members during the course of his duties, and that he specifically had contacts with Jackson, and that Jackson had personally admitted his gang affiliation to Officer Delgado. Further, there was evidence of Jackson’s extensive gang tattoos. Under any standard of prejudice, the admission of the FI cards did not have an effect on the outcome of Jackson’s case.

### *3. Evidence Jackson was Feather’s Pimp*

Jackson contends that Feather’s testimony that he was her pimp was unduly prejudicial, and that his trial counsel was ineffective for not objecting to admission of the evidence. We disagree.

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<sup>7</sup> Jackson’s trial took place almost two years before the Supreme Court decided *Sanchez*.

During her direct examination, before describing the events surrounding the shooting, Feather testified about her background with Jackson. During this testimony, Feather testified that she began associating with members of the Hoover gang when she was about fifteen or sixteen years old. She knew Jackson “very well,” and they were “a little more than friends” in the sense that he’d be around if she needed him or she’d be around if he needed her. However, their relationship was not sexual. Further, Feather testified that, starting sometime around June of 2013, after having known Jackson for about two years, she willingly became a prostitute for him, and would give all of her money to him, and get nothing back from him, for her sex work. Feather testified she let Jackson act as her pimp because the Hoovers would not allow her to work for herself in the neighborhood. Feather testified that Jackson “protected” her.

We find Jackson’s counsel did not provide deficient representation in failing to object to the testimony summarized above because evidence of Feather’s relationship with Jackson was relevant to explain why she initially was not forthcoming in identifying Jackson from photo arrays, and also to explain her general hesitancy to reveal information about Jackson. Because an objection to Feather’s testimony would have been futile, there was no reason for trial counsel to object. The prosecution was entitled to present evidence relevant to Feather’s credibility, including the a wide accounting of her relationship with Jackson. (*People v. Gonzales and Soliz* (2011) 52 Cal.4th 254, 289.)

Any prejudice from identifying Jackson as a pimp was outweighed by the probative value explaining why the initial statements of the only witness who was prepared to identify Jackson as the shooter in court were initially evasive.



Reasonable trial counsel would have understood that there was no basis for objecting to evidence of the relationship between Jackson and Feather.

Finally, assuming that Jackson's counsel should have objected to Feather's "pimp" testimony, we find Jackson has not established prejudice, because he has not persuaded us that the result of his trial would have been any different had the jury not heard the "pimp" evidence. The critical aspect of Jackson's trial was whether the jury believed Feather when she recounted the shooting, not whether they believed her when she said that Jackson acted as her pimp at times prior to the shooting. Evidence that Jackson was Feather's pimp was not directly prejudicial to Jackson on the issue of his guilt as the shooter. We are not persuaded that the evidence contributed to the jury's decision to find Jackson was the shooter.

#### **DISPOSITION**

The judgment is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.