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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.

JON GUILLORY,

Defendant and Appellant.

B268598

(Los Angeles County
Super. Ct. No. BA395784)

APPEAL from a judgment of the Superior Court of Los Angeles County, Sam Ohta, Judge. Affirmed.

Kevin D. Sheehy, 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, Assistant Attorney General, William H. Shin and Tasha G. Timbadia, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Jon Guillory appeals from the judgment after his conviction on eight counts, including attempted murder. We correct a sentencing error but otherwise affirm.

FACTUAL BACKGROUND

On March 29, 2012, Los Angeles Police Officers Chase Lambert and David Lopez were driving in their police vehicle near the intersection of Broadway and 53rd Street in Los Angeles. They were patrolling the area because there had been numerous recent shootings between two street gangs, the Broadway Gangster Crips and the East Coast Crips.

As Officer Lambert prepared to turn left from southbound Broadway onto 53rd Street, he noticed that a white minivan had stopped in the eastbound lane on 53rd Street, just north of a taco stand located at the southeast corner of the intersection. The officers heard four to five gunshots. Officer Lopez saw a “black” hand holding a gun extending from the right side of the van, and saw a muzzle flash.¹ People standing near the taco stand scattered, including a black male who ran south on Broadway.² Officer Lopez described the black male as “wearing gang attire, loose clothing, dark clothing, and a hat.” The gun extending from the van was pointed south towards the direction of the running black male.

¹ Officer Lambert saw a “small[,] dark object” pointing southbound from the passenger side of the van, but was unable to identify it as a gun.

² Witnesses varied as to how many people they recalled were standing at or near the taco stand at the time of the shooting, but were consistent that there was a black male who ran southbound on Broadway when the shots rang out.

The van sped off down 53rd Street with Officers Lambert and Lopez in pursuit. The chase covered many city blocks with the van making several turns. At San Pedro and 61st Streets, passerby Priscilla Urbina saw a man jump out of the van and walk into a nearby building as the van continued down the street. The police passed by a little while later.

Officers Lambert and Lopez caught up to the van when it hit a tree and stopped on Avalon Boulevard south of 61st Street. The officers observed appellant Guillory exiting the van and running away on foot. Police apprehended him later in the back of a nearby property. Police also apprehended the man who had jumped out of the van at San Pedro and 61st Streets, and found a revolver with four spent shell casings under a car at the location where he had jumped out. The man was identified as Wesley Jennette. At the time he was apprehended, officers observed Jennette rubbing dirt on his hands, which Officer Jose Figueroa testified may have been an effort to disguise residue left on his hands from using a handgun.

The van had been stolen two days before the shooting.

Guadalupe C., who had been working at the taco stand at the time of the shooting, exited the stand about 10 minutes after the incident and discovered a bullet hole in the windshield of his truck parked nearby on Broadway. A police officer recovered a bullet from the truck's interior.

At trial, the prosecution proceeded on the theory that Jennette had fired the gun and appellant had driven the van. The prosecution argued that Jennette's target was the black male

who had run down Broadway after the shots rang out.³ The prosecution asserted that appellant was culpable for the shooting as an aider and abettor.

Officer Lopez, testifying as a gang expert, opined that appellant and Jennette were members of the East Coast Crips, which the parties stipulated was a criminal street gang under Penal Code section 186.22.⁴ Officer Lopez stated that the East Coast Crips and Broadway Gangster Crips were rivals. The area at 53rd Street and Broadway was within the boundaries claimed by the Broadway Gangster Crips, and the corner with the taco stand was a known location for members of the Broadway Gangster Crips to congregate. Presented with a hypothetical scenario with facts mirroring those of the incident at the taco stand, Officer Lopez opined that such a shooting attempt would be for the benefit of a criminal street gang.

PROCEDURAL BACKGROUND

The jury convicted appellant of one count of attempted murder (§§ 187, subd. (a), 664), four counts of assault with a firearm (§ 245, subd. (a)(2)), one count of discharging a firearm with gross negligence (§ 246.3, subd. (a)), one count of unlawful driving/taking of a vehicle (Veh. Code, § 10851, subd. (a)), and one count of evading an officer (Veh. Code, § 2800.2, subd. (a)). The jury found true gang and firearm enhancements. (§§ 186.22, subd. (b), 12022.53, subds. (b), (c), (e)(1).) Appellant was

³ The prosecution referred to the black male as “John Doe,” and we shall do the same.

⁴ All further statutory references are to the Penal Code unless otherwise indicated.

sentenced to 30 years and 8 months, with 1,529 days of custody credits and various fines. Appellant timely appealed.

DISCUSSION

1. Sufficiency of Evidence

Appellant argues there was insufficient evidence to support his conviction for attempted murder. We reject this argument.

a. Legal Standard

When evaluating the sufficiency of evidence, “we review the whole record in the light most favorable to the judgment below 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. [Citations.] ‘ “[I]f the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness’s credibility for that of the fact finder.” ’ ” (*People v. Snow* (2003) 30 Cal.4th 43, 66.) This standard applies whether direct or circumstantial evidence is involved. (*Ibid.*)

As to the elements of the crime at issue, “[a]ttempted murder requires the specific intent to kill and the commission of a direct but ineffectual act toward accomplishing the intended killing.” (*People v. Lee* (2003) 31 Cal.4th 613, 623.) Proof of direct aiding and abetting requires a showing that the aider and abettor shared the specific intent of the direct perpetrator. (*Id.* at pp. 623-624.) Thus, the prosecution had to prove beyond a reasonable doubt that both Jennette and appellant shared the specific intent to kill.

b. Appellant’s Arguments

Appellant claims there was insufficient evidence to prove that he or Jennette intended to kill anyone on March 29, 2012, at

53rd Street and Broadway. He asserts that the evidence at most indicated that “the shooter intended to scare one or more persons with gunfire at a location known to be a hangout for a rival gang.”⁵

Appellant raises a number of arguments in support of this claim. He argues there was no evidence of John Doe’s identity or that he was affiliated with the Broadway Gangster Crips, and that Officer Lopez’s “suspicion” along these lines did not constitute evidence. Appellant further argues there was no evidence that he or Jennette believed John Doe or anyone else in the vicinity to be members of that rival gang. Appellant claims there was no evidence he ever discussed, agreed to, or was even aware of a plan or intent to kill someone affiliated with the Broadway Gangster Crips. Appellant argues that Officer Lopez’s testimony regarding shootings between the East Coast Crips and Broadway Gangster Crips did not establish any prior plans or attempts to kill rival gang members or that anyone had actually been struck by a gang member’s bullet. Appellant claims that, at most, the evidence supported an inference that “two gangs hated each other and used gunfire to intimidate and terrorize people on each other’s turf.”

Appellant also argues that the details of the shooting itself do not indicate an intent to kill. He asserts that the evidence did not show Jennette aimed his gun at John Doe or anyone else, and that there was no evidence of the “separation distance” between Jennette and the potential targets such that the jury could

⁵ Appellant does not appear to dispute that he and Jennette shared an intent, and argues only that it was not an intent to kill.

conclude that Jennette was shooting at someone “at close range.” Appellant points to the lack of evidence that any bullets struck the taco stand or “traveled in the general direction of, or close to,” the taco stand or any of the people outside it. Appellant notes that after the shooting, the van left the area rather than chasing after John Doe.

c. Discussion

We disagree that the evidence was insufficient to show an intent to kill. There was substantial evidence that John Doe was a gang member or might be mistaken as such. Lopez, a police officer and gang expert, testified that John Doe was wearing “gang attire.” This was not an unsupported suspicion, as appellant claims—Officer Lopez explained he reached his conclusion because that style of clothing was “typical” for that particular corner where the Broadway Gangster Crips congregated.

Officer Lopez also offered evidence that the East Coast Crips and Broadway Gangster Crips were at “war” because of “back-to-back shootings,” evidence from which a jury reasonably could conclude that appellant and Jennette traveled to 53rd Street and Broadway to target rival gang members. Appellant argues this evidence was sufficient only to show that the gangs used gunfire to frighten each other, not kill, but this defies reason. The jury reasonably could infer that Officer Lopez’s testimony regarding “war” and “shootings” referred to gang members attempting to kill each other.

But even if this evidence was insufficient, the prosecution was not required to prove motive: “The act of firing toward a victim at a close, but not point blank, range “in a manner that could have inflicted a mortal wound had the bullet been on target

is sufficient to support an inference of intent to kill” ’ ’ ”
(*People v. Smith* (2005) 37 Cal.4th 733, 741, quoting *People v. Chinchilla* (1997) 52 Cal.App.4th 683, 690.) “[T]hat inference is not dependent on a further showing of any particular *motive* to kill the victim.” (*Ibid.*) Thus, the prosecution was not required to prove that Jennette and appellant targeted John Doe because he was a gang member (or because they believed he was); it was sufficient to prove that Jennette had shot at John Doe at close range such that he could have been killed had the bullet been on target.

And there was such evidence. Officer Lambert identified on a photograph where the van was relative to the taco stand. He testified that the closest person was only “20 feet or so” from the van. Guadalupe C. indicated on a photograph where John Doe was standing, just in front of the taco stand. Based on this information, the jury could reasonably conclude that John Doe was at a distance from the van that could fairly be considered “close range.” (See *People v. Perez* (2010) 50 Cal.4th 222, 230 [rational trier of fact could find that defendant firing at eight people 60 feet away established an intent to kill].)

There was also sufficient evidence that Jennette was firing towards John Doe. Officer Lopez testified that he saw the gun fire when it was pointed southwards, which was where John Doe was standing. A bullet struck Guadalupe C.’s truck, parked against the sidewalk on Broadway⁶—this is consistent with the shooter aiming down the sidewalk, where John Doe was, rather than at the taco stand (this also explains why no bullets were

⁶ Guadalupe C. indicated on a photograph the truck’s precise location.

found in the taco stand itself). The fact that the bullet hit the windshield indicated the gun was firing at an elevation appropriate for hitting human targets. Based on this evidence, the jury could reasonably conclude that Jennette was aiming towards John Doe, and not, for example, firing in the air or at the ground in order to frighten him.

In sum, this evidence was sufficient for a reasonable trier of fact to find appellant guilty of attempted murder beyond a reasonable doubt.

2. *Pitchess* Review

In advance of trial, appellant brought a motion pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*) seeking information from the personnel records of Officers Lambert and Lopez. Peace officer personnel records and records concerning citizen complaints made against peace officers are confidential and are subject to discovery only under limited circumstances. (§ 832.7.) A defendant requesting confidential personnel records and complaints must make a good cause showing by affidavit setting forth the materiality of the requested information to the pending litigation. (Evid. Code, § 1043, subd. (b)(3).) If a defendant shows good cause, the court must conduct an in camera hearing to determine what information sought, if any, must be disclosed. (*People v. Gaines* (2009) 46 Cal.4th 172, 179.) A criminal defendant is entitled to discovery of all relevant documents or information in the confidential records of the peace officers accused of misconduct against the defendant, provided the information does not concern officer conduct occurring more

than five years⁷ before the incident, the results of internal police investigations, or facts with no practical benefit to the defense. (*Id.* at pp. 179, 182; see Evid.Code, § 1045, subd. (b).) This encompasses not only evidence that would be admissible at trial, but also evidence that may lead to admissible evidence or evidence that is pertinent to the defense. (*Richardson v. Superior Court* (2008) 43 Cal.4th 1040, 1048-1049; *City of San Jose v. Superior Court* (1993) 5 Cal.4th 47, 53.) We review the trial court's determination regarding the discoverability of material in peace officer personnel files for an abuse of discretion. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1228.)

We are authorized to conduct an independent examination of the in camera *Pitchess* proceedings to determine whether the trial court wrongly withheld any responsive documents. (*People v. Mooc, supra*, 26 Cal.4th at p. 1228.) We have thus reviewed the record of the trial court *Pitchess* proceedings, including a sealed reporter's transcript of the in camera review of the officers' records. We conclude the trial court correctly evaluated the *Pitchess* materials, and its orders regarding the disclosure of the *Pitchess* materials were correct.⁸

⁷ Appellant is incorrect that *Pitchess* or *Brady v. Maryland* (1963) 373 U.S. 83 requires review of police personnel files more than five years old. (See *City of Los Angeles v. Superior Court* (2002) 29 Cal.4th 1, 15, fn. 3 ["We do not suggest that trial courts must routinely review information that is contained in peace officer personnel files and is more than five years old to ascertain whether *Brady* . . . requires its disclosure." (Citation omitted.)].)

⁸ Appellant requests that this court independently review the documents considered by the trial court. We decline to do so. Appellant cites no authority in support of this request, and the

3. Sentencing Error

As conceded by respondent, appellant is entitled to one more day of actual custody credit than the 1,330 days the trial court awarded, reflecting his custody from March 29, 2012, to November 19, 2015. His judgment must be corrected to reflect 1,331 days of actual custody, which combine with his 199 days of conduct credit for a total credit of 1,530 days.

DISPOSITION

We modify appellant's judgment as set forth in part 3 of this opinion. The trial court is directed to forward a corrected abstract of judgment to the Department of Corrections and Rehabilitation.

In all other respects, the judgment is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.

record before us is sufficient to determine that there was no error on the part of the trial court.