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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

LEONARD HALL,

Defendant and Appellant.

B265883

(Los Angeles County
Super. Ct. No. BA422563)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Robert J. Perry, Judge. Modified and affirmed with directions.

David L. Polsky, 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, Michael C.
Keller and Nicholas J. Webster, Deputy Attorneys General, for Plaintiff and
Respondent.

Leonard Hall appeals from the judgment entered following a jury trial which resulted in his conviction of one count of second degree murder (Pen. Code, § 187, subd. (a))¹ and two counts of attempted murder (§§ 187, subd. (a), 664). The jury found true the allegations that defendant committed the offenses for the benefit of a criminal street gang (§ 186.22, subd. (b)) and personally and intentionally discharged a firearm causing great bodily injury and death in the commission of the offenses (§ 12022.53, subd. (d)). The trial court sentenced defendant to a total term of 128 years to life in state prison, consisting of 40 years to life for the murder conviction and accompanying firearm enhancement, plus 44 years to life for each of the attempted murder convictions and accompanying firearm and gang enhancements.

Defendant contends there is insufficient evidence to support the jury's true finding on the gang allegation. He also contends, and respondent agrees, that full consecutive determinate terms are not authorized for his second attempted murder conviction and so those terms must be reduced to one-third the midterm. We order defendant's sentence corrected, as set forth in more detail in our disposition. Substantial evidence supports the true finding for the gang enhancement and so we affirm the judgment of conviction.

BACKGROUND

In the early afternoon of October 31, 2010, members of the Kitchen Crips gang held a meeting. Defendant and Marcus Denson were among those present. Denson, who testified for the prosecution at trial, indicated the meeting was held because defendant's father was angry because the gang was not taking good care of him after he was shot, supposedly by a member of the rival Swans gang. After that meeting, Denson, defendant and a few other

¹ All further undesignated statutory references are to the Penal Code.

Kitchen Crips went to another meeting. There, a senior member of the Kitchen Crips told Denson and defendant to “go scope out across Central, which is Swan territory, and report back.”

The prosecution’s gang expert testified that during this time there “were numerous shootings and the Kitchen Crips and the Swans were at war, and there were shootings going on back and forth across the street, basically, between the gangs.” It was “an active war.”

Denson understood the senior member to mean he should “[g]o see if there were any Swans out and come back and let them know.” Denson did not want to refuse this directive. He had been ostracized from the gang earlier and was “barely just getting in good with [them]” at that point. Denson was not armed and was not concerned for his own safety in Swans territory because he had relatives there.

Denson testified that he did not know that defendant had a gun and did not expect to get involved in a shooting during the trip. At the same time, he also acknowledged that any Kitchen Crips gang member who went into Swans territory would be in danger and could be shot or killed. Denson agreed that it would have been a “suicide mission” for defendant to go into Swans territory without a weapon.

The two men entered Swans territory on 83rd Street, turned onto Wadsworth and then turned into the first alley. This alley contained gang graffiti. According to the prosecution’s gang expert, the graffiti was written by Swans gang members. It listed the initials for several gangs, including the Kitchen Crips. These letters were crossed out, which was the Swans way of saying that the other gangs were their enemies and they would kill them.

As they walked down the alley, Denson noticed some people in a backyard. Denson did not think the people were gang members because he

did not “feel the tension and the vibe” he usually felt when he encountered rival gang members. Denson nodded to the people and kept walking. Denson heard shots, looked back and saw defendant shooting into the backyard at the people. Defendant did not say anything before he started firing. Denson ran away.

The occupants of the backyard were William Shannon, his son Terrence Shannon and his five-year-old grandson Aaron Shannon, Jr., who were in the yard near the fence. Damian Pearson and Aaron Jr.’s father were near the house. None of them were gang members. A subsequent police investigation showed that the backyard was directly across the alley from the gang graffiti, however.

William noticed defendant and Denson as they came down the alley because he had never seen anybody walking down the alley before. Both men walked past the property, but seconds later defendant returned and began shooting at them. Defendant hit William in the arm, Terrence in the leg and Aaron Jr. in the head.

Paramedics came to the scene and took Aaron Jr. to the hospital. He died the next day.

Surveillance video from a nearby store recorded Denson and a man with braided hair running from the area. Two men who worked in the area heard gunshots, looked outside and saw Denson and another man running. They recognized Denson from the neighborhood. One of the men later selected defendant from a six-pack photographic lineup as resembling the man with Denson.

William Shannon identified defendant as the shooter in a six-pack photographic lineup and at trial. Terrence also identified defendant as the

shooter in a six-pack photographic lineup and at trial. Pearson identified defendant as the shooter at trial.

Defendant's mother testified on his behalf that his hair was in a natural afro style, not braids, on the day of the murder. Defendant's friend Felipe Ayala testified that defendant's hair was in an afro on the day of the murder. Defendant also presented the testimony of Denson's friend Mary Lester that she overheard Denson and some other men talking a few days before the murder. The men wanted revenge against someone who had shot at them. A day or two after the murder, Denson told Lester that he was present during the shooting, and they messed up and did not see the little boy.

DISCUSSION

II. Substantial Evidence Supports the Gang Enhancement

Defendant contends there is insufficient evidence that the shooting was either gang related or conducted with the specific intent to further criminal conduct by gang members.

A. Sufficiency of the Evidence

“In reviewing a challenge to the sufficiency of the evidence, we do not determine the facts ourselves. Rather, we “examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—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.” [Citations.] We presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] The same standard of review applies to cases in which the prosecution relies primarily on circumstantial evidence and to special circumstance allegations. [Citation.] “[I]f the circumstances

reasonably justify the jury's findings, the judgment may not be reversed simply because the circumstances might also reasonably be reconciled with a contrary finding." [Citation.] We do not reweigh evidence or reevaluate a witness's credibility. [Citation.]” (*People v. Nelson* (2011) 51 Cal.4th 198, 210.)

B. *Gang Enhancement*

Section 186.22, subdivision (b)(1) provides enhanced punishment for “any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members.” This subdivision is often described as having two prongs. (*People v. Albillar* (2010) 51 Cal.4th 47, 59 (*Albillar*).)

The first prong of the subdivision requires the crime be committed “for the benefit of, at the direction of, or in association with any criminal street gang.” This prong is written in the disjunctive and so only one of the three requirements need be proven. (See *People v. Leon* (2008) 161 Cal.App.4th 149, 162.) If the evidence shows a crime was committed in association with another gang member, that is sufficient to satisfy the first prong. (*Ibid.*) This prong is often described broadly as requiring proof that the crime is “gang-related.” (*Albillar, supra*, 51 Cal.4th at p. 60.)

The second prong requires the crime be committed “with the specific intent to promote, further, or assist in any criminal conduct by gang members.” (*Albillar, supra*, 51 Cal.4th at p. 64.) “There is no further requirement that the defendant act with the specific intent to promote, further, or assist a *gang*.” (*Id.* at p. 67.) There is likewise no requirement that the defendant have a specific intent to benefit the gang. (*People v. Morales* (2003) 112 Cal.App.4th 1176, 1198 (*Morales*).)

In assessing the sufficiency of the evidence to support a true finding on a gang enhancement, “the typical close case is one in which one gang member, acting alone, commits a crime.” (*Morales, supra*, 112 Cal.App.4th at p. 1198.)

C. *First Prong*

Defendant contends that there is no evidence to support a finding that the shootings were committed for the benefit of, at the direction of, or in association with a criminal street gang.

1. Benefit

Deputy David Rodriguez testified that the shootings were done to benefit the Kitchen Crips gang. Defendant acknowledges that expert testimony that specified criminal conduct benefited a criminal gang can be sufficient to support a gang enhancement (*Albillar, supra*, 51 Cal.4th at p. 63), but contends that there is insufficient evidence to support Deputy Rodriguez’s opinion. He points out that the victims were not gang members, there was no evidence that the victims knew defendant was a gang member and defendant and his gang did not take credit for the shootings afterwards. Defendant maintains there was nothing gang related about the shootings.

Even without an announcement of responsibility by defendant or his gang, the circumstances of the shooting strongly indicated that it was a gang-related shooting by the Kitchen Crips gang. The shooting took place close to the boundary between the Kitchen Crips’ territory and the Swans’ territory, at a time when the two gangs were involved in a violent gang conflict. Although the victims were not gang members, they were standing in a yard directly across an abandoned alley from Swans gang graffiti disrespecting the Kitchen Crips gang. The victims did not know defendant, ruling out a personal motive for the shooting. Deputy Rodriguez’s opinion that such a

shooting would benefit the Kitchen Crips gang by instilling fear in the community was a reasonable conclusion.

2. Association

Defendant was in the company of fellow gang member Denson at the time of the shooting, and the two men were on a gang mission. As defendant acknowledges, a jury can reasonably infer “the requisite association from the very fact that defendant committed the charged crimes in association with fellow gang members.” (*People v. Martinez* (2008) 158 Cal.App.4th 1324, 1332; *Morales, supra*, 112 Cal.App.4th at pp. 1197-1198.) Defendant contends, however, that he did not commit the shootings “in association with” Denson, because Denson played no role in the shooting. He points to Denson’s testimony that he believed that he was merely going on a reconnaissance mission, did not know that defendant had a gun and had no indication that defendant would shoot innocent people.

The jury was not required to believe this exculpatory testimony by Denson. The jury was free to credit other aspects of Denson’s testimony which were consistent with his knowing support of defendant’s criminal activities.²

Denson gave a vivid description of the perils of travelling in Swans territory without a gun. He testified that a Kitchen Crips gang member who went into Swans territory would be in danger and could be shot or killed. He agreed that it would have been a “suicide mission” for defendant to go into Swans territory without a weapon. Since the men’s trip was not a suicide mission, the jury could have inferred that Denson knew or believed that defendant had a gun.

² As the jury was aware, Denson had already pled guilty to one count of voluntary manslaughter and two counts of attempted murder, and admitted the gang allegations for each count.

Denson also testified that, unlike most Kitchen Crips gang members, he had relatives in Swans territory and could travel there safely and without the need for a weapon. If the Kitchen Crips only wanted a scouting report on Swans territory with no possibility of violence, it would have made far more sense to send Denson alone. Sending defendant with Denson created the risk of a violent confrontation if any Swans were out and about. Thus, the jury could have inferred that violence was an accepted and perhaps desired part of the trip.

Even if violence was not a planned outcome of the mission, it was a foreseeable one under the circumstances, including violence involving innocent victims. Since the two men were looking for Swans gang members, it was entirely foreseeable that they would find a gang member and do so under circumstances which would cause defendant to shoot preemptively. It was also foreseeable that the men might encounter residents of the area who were not gang members but who had some reason for alerting the Swans to the presence of young male strangers, possibly rival gang members, in their neighborhood. These people also posed a danger to defendant, and it was entirely foreseeable that he would shoot one or more of them preemptively. Defendant and Denson did in fact unexpectedly encounter residents of the area, who were in a backyard across the alley from Swans gang graffiti, suggesting a possible connection between the people in the yard and the Swans gang. It was this encounter which led to the shootings.

Denson was aware that defendant's life would be in danger while travelling into Swans territory. He chose to accompany defendant at their gang's request. A jury could reasonably infer that Denson did so to support defendant during this dangerous trip, and that this support extended to shootings and killings. This is sufficient evidence to support the finding

defendant committed the crimes in association with Denson, and that the crimes were gang related. (See *Morales, supra*, 112 Cal.App.4th at pp. 1197-1198; *People v. Martinez, supra*, 158 Cal.App.4th at p. 1332.)

D. Second prong

When, as here, “substantial evidence establishes that the defendant intended to and did commit the charged felony with known members of a gang, the jury may fairly infer that the defendant had the specific intent to promote, further, or assist criminal conduct by those gang members.”

(*Albillar, supra*, 51 Cal.4th at p. 68; see also *People v. Villalobos* (2006) 145 Cal.App.4th 310, 322 [“Commission of a crime in concert with known gang members is substantial evidence which supports the inference that the defendant acted with the specific intent to promote, further or assist gang members in the commission of the crime.”].)

Additionally, there is evidence that defendant committed the shootings with the intent to further or assist future criminal conduct by members of his gang. Deputy Rodriguez opined that defendant’s shooting would have the effect of instilling fear in the community and so allow the gang to “commit more criminal acts without fear of being caught or being told on.” The jury could reasonably infer that defendant committed the shooting with the intent to achieve this result. (See *People v. Vasquez* (2009) 178 Cal.App.4th 347, 353 [jury could find defendant committed murder with intent to achieve the gang expert’s “predicted effect of intimidating rival gang members and neighborhood residents, thus facilitating future crimes committed by himself and his fellow gang members”]; see also *People v. Miranda* (2011) 192 Cal.App.4th 398, 411-412 [it is routine to draw inferences about intent from the predictable results of action].) Such an inference is particularly reasonable in this case, where there was no other apparent reason to commit

the crimes. There was no evidence defendant had a personal reason for the shootings and defendant and his gang derived no monetary benefit from the crimes.

II. Determinate sentence

The punishment for attempted murder is a determinate term of five, seven or nine years. (§§ 190, 664, subd. (a).) The trial court imposed the high term of nine years for each of defendant's convictions for that offense. The court also imposed the full determinate term of 10 years for the gang enhancement. (§ 186.22, subd. (b)(1)(c).) Defendant contends, and respondent agrees, that these terms were not authorized for the second attempted murder conviction. They are correct.

When a defendant is convicted of more than one offense with a determinate term, and the trial court imposes consecutive sentences, "the term with the longest sentence is the 'principal term'; any term consecutive to the principal term is a 'subordinate term.'" (§ 1170.1, subd. (a).) The court imposes the full term, either lower, middle, or upper, for the principal term. However, in general (there are exceptions), the court imposes only 'one-third of the middle term' for subordinate terms. (*Ibid.*)" (*People v. Felix* (2000) 22 Cal.4th 651, 655.) "Enhancements are added to subordinate terms for 'violent' felonies, but they can be only 'one-third of the term.'" (§ 1170.1, subd. (a); see also § 1170.11.)" (*Ibid.*)

We will treat the count 2 attempted murder conviction as the principal term and the count 3 attempted murder conviction as the subordinate term. The term for the count 3 conviction is corrected from nine years to two years four months. The term for the gang enhancement is corrected from 10 years to three years four months. The firearm enhancement carries an indeterminate term of 25 years to life and remains unchanged.

DISPOSITION

The term for the count 3 attempted murder conviction is ordered corrected from nine years to two years four months, and the term for the section 186.22 enhancement to count 3 is ordered corrected from 10 years to three years four months. The total sentence for count 3 is now 30 years eight months to life. Defendant's total sentence is now 114 years eight months to life in state prison. The clerk of the superior court is directed to prepare an amended abstract of judgment reflecting these changes and to deliver a copy to the Department of Corrections and Rehabilitation. The judgment is affirmed in all other respects.

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GOODMAN, J.*

We concur:

CHAVEZ, J., Acting P.J.

HOFFSTADT, J.

* Retired judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.