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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

SERGIO ALBERTO MUNOZ,

Defendant and Appellant.

2d Crim. No. B255132
(Super. Ct. No. 2012015846)
(Ventura County)

Sergio Alberto Munoz appeals the judgment entered after a jury convicted him of active participation in a criminal street gang (Pen. Code,¹ § 186.22, subd. (a)), and four counts of assault with a firearm (§ 245, subd. (a)(2)). The jury also found true allegations that appellant personally used a firearm (§ 12022.5, subd. (a)), and committed the assaults for the benefit of a gang (§ 186.22, subd. (b)(1)).² The trial court selected the assault in count 2 as the principal term and sentenced appellant to 17 years in state prison, consisting of the three-year midterm plus a 10-year gang enhancement and a four-year enhancement for the personal firearm use allegation. Sentences on the remaining counts were stayed under section 654.

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

² Appellant was 15 years old when he committed the crimes. He was charged as an adult pursuant to section 707, subdivision (d)(2)(C)(ii) of the Welfare and Institutions Code.

At the age of 13, appellant became a member of the West Side Locos gang (WSL or the gang) in Simi Valley. His gang moniker is "Lil Apache." Andrew Ayungua and Brandon Barrientos are former WSL members. Andrew left WSL in 2007, after testifying against another member of the gang. Barrientos left after he was ordered to kill Andrew for being a "rat." Andrew and Barrientos were subsequently targeted by WSL for retaliation.

Andrew's brother Alexander had been involved in fights with WSL members and was stabbed during one such altercation in April 2012. On the evening of April 30, 2012, Alexander, Andrew, Barrientos, and Francisco Alfaro attended a barbeque at Andrew's apartment to celebrate Andrew's release from the hospital. Alfaro drove Alexander and Barrientos in his truck to a nearby grocery store. Barrientos sat in the front passenger seat, while Alexander sat in the rear seat behind Barrientos. As they were returning from the store, they saw a white Infinity or Nissan sedan driving toward Andrew's apartment. The driver and passengers in the sedan all appeared to be wearing wigs.

Alfaro pulled into a parking lot in an effort to evade the white sedan. As he was about to back out of the parking lot, the sedan came "zooming down the street" and pulled behind Alfaro's truck. Alexander recognized the driver as Anthony Romero, the WSL member who had ordered Barrientos to kill Andrew.

Alfaro put his truck in drive and quickly drove away. The white sedan pulled up along the right side of Alfaro's truck shortly thereafter. Romero asked Barrientos where they "were from" and the passengers in the back seat yelled, "West Side Locos." Barrientos and Alexander recognized appellant as the rear left passenger. Appellant held a black pistol out the window and fired several shots at Alfaro's truck.

Alfaro slammed on his brakes and quickly turned onto another street. Alexander called Andrew and told him what had happened, and Andrew's wife called the police. Alfaro drove side streets back to Andrew's apartment and parked in the garage to avoid being seen.

Alexander and Alfaro were interviewed by the police that evening. Alexander identified the shooter as "Lil Apache" and claimed he did not know his real name. Alexander did not identify appellant by name or identify Romero as the driver because he feared retaliation if he cooperated with the police.

About three hours after the shooting, a patrolling officer saw a white Infinity sedan that matched the description of the suspects' vehicle. The Infinity sped away when the officer attempted to conduct a traffic stop, and ran several stop signs and red lights as the pursuit continued. The Infinity eventually came to a stop after it ran over a spike strip. The four occupants were ordered out of the vehicle one at a time and were all arrested. Romero was the driver and was also the registered owner of the vehicle. Appellant was sitting directly behind Romero in the left rear passenger seat. WSL members Dennis Garmendez and Juan Rios were the other passengers.

A wig and several hats were recovered from the Infinity. A fully loaded .9-millimeter semiautomatic pistol was found on the sidewalk along the route of the police pursuit. Six spent shell casings from a .9-millimeter semiautomatic pistol were recovered from the location of the shooting. Five bullet impact points were discovered on Alfaro's truck, one of which had a bullet lodged inside. Appellant was subsequently determined, by a likelihood of one in 4.3 million Hispanics, to be the major contributor of DNA recovered from the trigger of the pistol and the straps on its grip. Romero, Garmendez, and Rios were all ruled out as possible contributors. Gunshot residue was found on both of appellant's hands.

Officer Michael Foley, a member of the Simi Valley Police Department's gang unit, testified as the prosecution's gang expert. WSL has about 40 to 50 members in Simi Valley and is the largest of the three local gangs. WSL's primary activities included attempted murder, assault with a deadly weapon, and robbery. Romero was a "shot caller" in the gang and admitted that the charged offenses were committed for the benefit of WSL. When given a hypothetical that mirrored the facts of the offense, Officer Foley opined that the shootings were committed to benefit the gang and to promote, further, or assist in the criminal activities of its members.

Appellant testified in his own defense. Appellant acknowledged his WSL membership and said he had no plans to leave the gang. On the day of the shooting, he skipped school and drank alcohol at Rancho Simi Park with a friend. After school got out, others joined them at the park for a barbeque. Romero arrived at about 5:00 p.m. Appellant knew Romero because he had been a friend of appellant's now-deceased father. Appellant's friend Yesenia Fernandez arrived at around 6:00 p.m., and appellant was with her until she left at about 8:00.³ Romero agreed to give appellant a ride home later that night. As Romero was about to drop appellant off at his house, a police car pulled up behind them. Romero sped away and appellant was "stuck." During the pursuit, appellant stepped on a gun on the floor. He picked it up, realized what it was, and threw it out the window.

Romero also testified for the defense. He pled guilty to charges related to the shooting and was sentenced to 17 years 8 months in state prison. Romero acknowledged that the incident took place, but claimed that appellant was not there. Romero claimed he could not identify the four individuals who were with him because it would endanger his life. According to Romero, he picked appellant up at the park after the incident and was giving him a ride home along with Garmendez and Rios when the police began pursuing them.

We appointed counsel to represent appellant in this appeal. After examining the record, counsel filed an opening brief raising no issues and requesting that we independently examine the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

On July 31, 2014, we advised appellant in writing that he had 30 days within which to personally submit any contentions or issues he wished to raise on appeal. Appellant did not respond.

³ Fernandez gave testimony corroborating appellant's version of the events. Although Fernandez found out about appellant's arrest the following day, she never contacted the district attorney's office to provide an alibi for him.

We have examined the record and are satisfied that appellant's attorney has fully complied with his responsibilities and that no arguable issue exists. (*People v. Wende, supra*, 25 Cal.3d at p. 441.)

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Jeffrey Bennett, Judge
Superior Court County of Ventura

Mark R. Feeser, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.