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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL ANGEL MORENO,

Defendant and Appellant.

B288334

(Los Angeles County
Super. Ct. No. BA452451)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert J. Perry, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Stephanie C. Brenan and Wyatt E. Bloomfield, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Miguel Angel Moreno (Moreno) was charged via information with attempted murder with malice aforethought (Pen. Code, §§ 187, subd. (a), 664; count 1) and manufacturing, importing, keeping for sale, giving, or receiving a large-capacity magazine (*id.*, § 32310, subd. (a); count 2). As to count 1, the People further alleged: the attempted murder was committed willfully, deliberately, and with premeditation within the meaning of Penal Code section 664, subdivision (a); the offense was committed for the benefit of, at the direction of, and in association with a criminal street gang with the specific intent to promote, further, and assist in criminal conduct by gang members pursuant to Penal Code section 186.22, subdivision (b)(1)(C); that Moreno personally and intentionally discharged a firearm, a handgun, within the meaning of Penal Code section 12022.53, subd. (c); and that Moreno personally used a firearm, a handgun, within the meaning of Penal Code section 12022.53, subdivision (b). As to count 2, the People alleged the offense was committed for the benefit of, at the direction of, and in association with a criminal street gang with the specific intent to promote, further, and assist in criminal conduct by gang members pursuant to Penal Code section 186.22, subdivision (b)(1)(A).

The case proceeded to trial. The jury convicted Moreno of both counts and found true the gang allegations as to both counts. As to count 1, the jury also found true the allegation that Moreno personally and intentionally discharged a firearm within the meaning of Penal Code section 12022.53, subdivision (c).¹

¹ At some point, the Penal Code section 12022.53, subdivision (b) allegation that Moreno personally used a handgun was dropped. It is unclear from the record when or why, but the

The trial court sentenced Moreno on count 1 to life with the possibility of parole, 20 years in prison for the firearm allegation, and 10 years for the gang allegation. The trial court sentenced Moreno to the midterm of two years on count 2 to run concurrent to Moreno's sentence on count 1, and stayed the gang allegation.

On appeal, Moreno contends the judgment must be reversed as to count 1, as the trial court failed to instruct the jury on the lesser included offense of attempted voluntary manslaughter based on unreasonable self-defense. Moreno does not challenge the judgment as to count 2. As Moreno was not prejudiced by the court's error in failing to instruct the jury on the lesser included offense, we affirm.

BACKGROUND

I. Prosecution Evidence

A. Victim Testimony

At approximately 4:15 p.m. on December 5, 2016, Larry Manuel (Manuel) parked his car in front of the Garu Liquor store on Washington Boulevard, entered the store, and purchased some tobacco leaf. Manuel returned to his car, sat in the driver's seat, and emptied the tobacco from its cigarette-like casing into the street. Manuel then closed his door and looked down at his cell phone. Soon thereafter, Manuel heard voices and saw somebody yelling at the side of his car. Manuel then opened the center console and looked down briefly into the console. When he looked back up he heard gunshots being fired into his car. Manuel

People's trial brief does not include this allegation, and the court did not include this allegation in its reading of the charges and allegations after taking Moreno's plea of not guilty.

exited his car from the passenger side and ran into the liquor store. He was not hit by any bullets, but had been cut by flying glass from the shattered passenger side window; he was not seriously injured. Manuel identified a picture of the driver's-side window of his car, which shows four bullet holes clustered toward the right of the driver's side window (from the shooter's perspective) mid-way between the top and bottom of the window. Manuel also identified a picture of a bullet hole that entered the driver's-seat of his car.² Manuel did not have a weapon with him when the shooting occurred, and had never seen Moreno or Jose Fonseca—Moreno's codefendant³—prior to the shooting.

B. *Witness Testimony*

After leaving the liquor store, Ricardo Beach observed two Hispanic males running across Washington Boulevard toward Manuel's car. One of the men asked Manuel where he was from, if he was "from Schoolyard or something," and then drew a gun. Upon seeing the gun, Beach ran around the corner to avoid getting shot; he thought he heard about five or six shots.

C. *The Investigation*

Detective John Maloney investigated the shooting. He had had hundreds of encounters with gang members in the Wilshire District—including members of the 18th Street and Schoolyard

² It is unclear from the photograph where exactly the bullet landed in the driver's seat, and the People never elicited any testimony or produced other evidence demonstrating exactly where the bullet entered the driver's seat.

³ Fonseca entered a plea prior to Moreno's trial.

Crips gangs. Detective Maloney knew Fonseca as an active 18th Street gang member. Fonseca's moniker was "Sleepy" and he had a four-inch number 18 tattooed on his cheek.

Detective Maloney executed a search warrant at Moreno's mother's residence and, among other items, recovered the following: a backpack containing two magazines for a Glock handgun, one of which was an extended magazine capable of carrying 30 rounds; a canister with a single round of ammunition; live rounds of ammunition; mixed nine-millimeter ammunition; a total of 18 nine-millimeter hollow-point rounds; one live nine-millimeter hollow-point; six nine-millimeter ball ammunition; one .22-caliber round; and one Remington 12-gauge shotgun shell. Police also recovered from Moreno's mother's home a wallet with Moreno's identification card, and a parking violation ticket addressed to Moreno that had been marked with gang graffiti representing West Side 18th Street. From Moreno's girlfriend's house, police recovered a nine-millimeter handgun.

During Detective Maloney's direct testimony, the People played a recording of the detective's interview with Moreno at the police station. Moreno stated he and Fonseca were both members of the 18th Street gang, and that Moreno first met him by "banging on him." According to Detective Maloney, "banging on" a gang member refers to when one gang member approaches another for the first time and asks him where he is from.

Detective Maloney was shown pictures of the interior of Manuel's car, and testified that one bullet entered the top of the passenger seat and two entered the left side of the passenger seat.

D. *Gang Expert Testimony*

Officer Kevin Guerrero was in charge of monitoring the 18th Street and Schoolyard Crips gangs at the time of the shooting. Officer Guerrero testified that the number 18 is the traditional symbol for the 18th Street gang and that their primary activities include attempted murder, robbery, burglary, assault with a deadly weapon, extortion, narcotics trafficking, and vandalism. The Garu Liquor store falls within the 18th Street gang's territory.

According to Officer Guerrero, Fonseca admitted to him that he was a member of the 18th Street gang, and told him his moniker was Sleepy. Fonseca also showed Officer Guerrero his tattoos, including a four-inch tattoo of the number 18 on his face. Officer Guerrero first met Moreno in 2016. Moreno told Officer Guerrero he was a member of the 18th Street gang, and that his moniker was "Micky." Moreno also showed Officer Guerrero his tattoos, including an 18th Street tattoo covering his torso from the neck line to his navel, and the number 18 tattooed on the top of Moreno's head.

E. *Video of the Shooting*

Surveillance videos which captured the shooting and surrounding area from multiple angles were played for the jury. One of the videos clearly captured the shooting itself. At 4:16 p.m., Manuel's car can be seen parked in front of the Garu Liquor store. Sixteen seconds later, Manuel opens the driver's-side door and leans slightly out of the car while still sitting. Sixteen seconds later, Manuel leans back into the car, closes the door, and immediately leans toward the console. One second later, Moreno comes into view, running across the opposite side of

Washington Boulevard toward Manuel's car. One second later, Fonseca comes into view. Both Moreno and Fonseca run across the median directly towards Manuel's car; they are approaching diagonally from the left rear side of Manuel's car. Each man's right hand is clutching at his waistband as they run toward the car. Moreno, with his left hand, pulls up his shirt to cover his face. Four seconds later, Manuel turns to his left and appears to look out of the driver's-side window. Two seconds later, Fonseca arrives, stops in front of the driver's-side window, and appears to be looking in at Manuel. Moreno is running right behind Fonseca, still clutching his waistband with his right hand, his face still covered by his t-shirt. One second later, Moreno arrives, pulls a gun from his waist with his right hand, and immediately shoots into the car. Both Moreno and Fonseca then immediately run away. (People's Exhibit 12.)

F. *Moreno's Statements to Police*

A tape recording of Detective Maloney and Detective Jones interviewing Moreno was played for the jury. Each juror received a transcript of the interview to read while listening to the recording.

Moreno initially denied knowing anything about the shooting. When further pressed, and asked by Detective Maloney whether Manuel owed Moreno money or threatened him, Moreno replied, "I don't know, sir, to tell you the truth. If somebody wanted to kill him he would have been dead." To which Detective Jones replied, "So are you saying you missed him on purpose?" Moreno replied, "Could have been, yeah, to tell you the truth" and then, "I'm not saying it was me. I'm saying I don't know man."

Moreno eventually admitted to the shooting. Detective Jones commented on how Moreno and Fonesca were heading towards Manuel's car with "a purpose," and Moreno replied, "I guess [Fonseca] knew him." Moreno stated he did not hear Fonseca say anything to Manuel, and that Moreno "just went along" with Fonseca and "went to see." Moreno claimed that when he got to the car, he saw Manuel reach down for something. Moreno stated that he got scared and shot through the window. Moreno said he knew he wouldn't actually hit Manuel because Manuel was sitting low in the car.

II. Defense Evidence

Moreno testified on his own behalf. He stated that on the afternoon of the shooting, he was walking to his girlfriend's house when he ran into Fonseca. They started walking together because they were going in the same direction. As they crossed Washington Boulevard, they started to run to avoid getting hit by traffic. Fonseca then went to Manuel's car "to see, you know, like . . . what was going on." Moreno went to the car as well because he just wanted to see who it was. Moreno then saw Manuel reaching for something and felt scared for his and Fonseca's life, so he "opened fire to the back of the car." Moreno testified that he was not trying to kill Manuel, he just wanted to scare him so that Moreno would have a chance to run away. Moreno testified that he deliberately aimed at the back of the car.

On cross-examination, Moreno testified that he was 26 years old, used to be a member of the 18th Street gang as a juvenile, but was no longer active. Moreno stated twice that he was a "working man" and no longer a member of his former gang. Moreno was shown a photograph of himself standing with three

other young men; Moreno is lifting up his shirt to reveal the number 18 tattooed on his torso from his navel up to his neck and throwing a gang sign with his left hand. The photograph was taken in 2016, when Moreno was 25 years old. Fonseca is one of the men in the picture with Moreno. Moreno testified that he only posed for the picture because one of the young men was a “famous rapper.” Moreno maintained that he was not showing his tattoo or throwing a gang sign to demonstrate pride in his gang. “That was just for the fan[s] or something,” said Moreno. “[The rapper was] going to make it as—like an album, C.D. album or something.”

Moreno testified that he just ran into Fonseca on 20th Street on the day of the shooting, but could not recall whether he saw the large 18 tattoo covering the majority of Fonseca’s cheek because he “wasn’t hanging out with him.” Moreno testified that he was only carrying a gun that day for the protection of himself and his family.

When asked why he pulled up his shirt to cover his face as he was approaching Manuel’s car, Moreno replied, “Kind of like trying to wipe my sweat off my fac[e].” The prosecutor commented that Moreno’s shirt was still held up above his face when he reached the car and asked, “Is that still just to wipe off the sweat from your face?” Moreno replied that although he did not notice at the time that his shirt was still covering his face, he has a big head and wears extra large shirts in the streets.

Moreno testified that he never saw Manuel with a gun. He stated that he did not see Manuel reach for a knife or any other type of weapon. “I just thought he had a gun,” Moreno said, “so I was scared for my life.” He testified that he shot at the car to scare Manuel and give himself a chance to run away.

III. Verdict and Sentence

Among others, the jury was given instructions on attempted murder, deliberation and premeditation, and self-defense. The jury was also given instructions on single witness testimony. After deliberating for approximately one hour and 20 minutes, the jury found Moreno guilty of both counts, and found true the gang and firearm enhancements. The court sentenced Moreno to an aggregate term of life with the possibility of parole plus 32 years in state prison.

DISCUSSION

On appeal, Moreno contends the judgment as to the attempted murder should be reversed because the court failed to instruct the jury *sua sponte* on the lesser included offense of attempted voluntary manslaughter based on unreasonable self-defense. To prevail on a theory of unreasonable self-defense at trial, a defendant must convince the fact-finder beyond a reasonable doubt that he or she held an actual but unreasonable belief that deadly force was necessary to avert an imminent threat of death or great bodily injury. The reviewing court can only reverse a judgment based on a trial court's failure to instruct a jury on a lesser included offense if the appellant demonstrates that the instruction was supported by substantial evidence and that he or she was prejudiced by the trial court's error.

We review the legal adequacy of the jury instructions independently. (*People v. Simon* (2016) 1 Cal.5th 98, 133.) Although we find that substantial evidence supports a theory of unreasonable self-defense, we do not find it reasonably probable that such an instruction would have produced a different result.

I. Legal Principles

A. *The Law of Unreasonable Self-defense*

“Self-defense, when based on a *reasonable* belief that killing is necessary to avert an imminent threat of death or great bodily injury, is a complete justification, and such a killing is not a crime. [Citations.] A killing committed when that belief is *unreasonable* is not justifiable.” (*People v. Elmore* (2014) 59 Cal.4th 121, 133-134.) Nevertheless, one who holds an *actual* but “‘unreasonable belief in the necessity to defend against imminent peril to life or great bodily injury does not harbor malice and commits no greater offense than manslaughter.’ [Citation.” (*Id.* at p. 134.) “Because imperfect self-defense reduces an intentional, unlawful killing from murder to voluntary manslaughter by negating the element of malice, this form of voluntary manslaughter is considered a lesser and necessarily included offense of murder. [Citation.” (*People v. Simon, supra*, 1 Cal.5th at p. 132.)

B. *The Court’s Duty To Instruct on Lesser Included Offenses*

The trial court has a sua sponte duty to instruct on a lesser included offense when “there is substantial evidence that would absolve the defendant from guilt of the greater, but not the lesser, offense.” (*People v. Simon, supra*, 1 Cal.5th at p. 132.) “This does not mean, however, that trial courts must instruct sua sponte on unreasonable self-defense in every murder case,” and the duty will not arise when the evidence is “‘minimal and insubstantial.’” (*People v. Barton* (1995) 12 Cal.4th 186, 201.) Substantial evidence is evidence from which a jury composed of reasonable people could find persuasive and could conclude that

the lesser, but not the greater offense was committed. (*People v. Breverman* (1998) 19 Cal.4th 142, 162.)

In reviewing the evidence de novo to determine whether the evidence is substantial enough to support an instruction on a lesser included offense, the court “should not evaluate the credibility of [a witness], a task for the jury.” (*People v. Breverman, supra*, 19 Cal.4th at p. 162.) And, the reviewing court determines only the “bare legal sufficiency” of the evidence, “not its weight.” (*Id.* at p. 177.) “As such, a sua sponte instruction should be given on every offense or theory supported by the evidence, and not merely on the theory most strongly supported by the evidence” or “believed to have the greatest merit.” (14 Witkin, Cal. Criminal Law (4th ed. 2012) Requirement of Instruction, § 678.) In addition, “[t]he testimony of a single witness, including the defendant, can constitute substantial evidence requiring the court to instruct on its own initiative.” (*People v. Lewis* (2001) 25 Cal.4th 610, 646.) “The fact that the evidence may not be of a character to inspire belief does not authorize the refusal of an instruction based thereon. . . . However incredible the testimony of a defendant may be he is entitled to an instruction based upon the hypothesis that it is entirely true. [Citations.]’ [Citation.]” (*People v. James* (2015) 238 Cal.App.4th 794, 804; accord, *People v. Flannel* (1979) 25 Cal.3d 668, 684.) Finally, we must “review the evidentiary support for an instruction ‘in the light most favorable to the defendant’ [citation] and should resolve doubts as to the sufficiency of the evidence to warrant instructions “‘in favor of the accused.’”” (*People v. Wright* (2015) 242 Cal.App.4th 1461, 1483, quoting *People v. Millbrook* (2014) 222 Cal.App.4th 1122, 1137 and *Flannel, supra*, at p. 685.)

C. *Harmless Error*

In a noncapital case, a trial court's error in failing to sua sponte instruct on a lesser included offense supported by the evidence "must be reviewed for prejudice . . . under *Watson*."⁴ (*People v. Breverman, supra*, 19 Cal.4th at p. 178.) The reviewing court "focuses not on what a reasonable jury *could* do, but what such a jury is *likely* to have done in the absence of the error under consideration." (*Id.* at p. 177.) In making this determination, we "consider, among other things, whether the evidence supporting the existing judgment is so *relatively* strong, and the evidence supporting a different outcome is so *comparatively* weak, that there is no reasonable probability" that the error affected the result. (*Ibid.*) A conviction of the charged offense may be reversed upon a failure to instruct on a lesser included offense only if, "after an examination of the entire cause, including the evidence' (Cal. Const., art. VI, § 13), it appears 'reasonably probable' the defendant would have obtained a more favorable outcome had the error not occurred (*Watson, supra*, 46 Cal.2d [at p.] 836)." (*Id.* at p. 178.)

II. **The Trial Court Erred by Failing To Instruct the Jury on Unreasonable Self-defense**

At Moreno's request, the trial court instructed the jury that a defendant is not guilty of attempted murder if he was "justified in attempting to kill in self-defense." This self-defense instruction informed the jury that a defendant has acted in "lawful self-defense" if: (1) the defendant "reasonably believed that he was in imminent danger of being killed or suffering great

⁴ *People v. Watson* (1956) 46 Cal.2d 818 (*Watson*).

bodily injury”; (2) the defendant “reasonably believed that the immediate use of deadly force was necessary to defend against that danger”; and (3) the defendant “used no more force than was reasonably necessary to defend against that danger.” In returning a guilty verdict on the attempted charge, the jury necessarily found that Moreno did not reasonably believe that he was in imminent danger such that shooting at Manuel was necessary to defend himself. The jury was never tasked, however, with determining whether Moreno *actually* believed his life was in danger.

Moreno told Detectives Maloney and Jones that he saw Manuel reach down for something prior to shooting Manuel’s car. At trial, he also testified that he felt scared for his life when he observed Manuel reaching down because he thought Manuel had a gun. Moreno also told the detectives and testified that he carried the gun solely for his personal protection, and that he only approached Manuel’s car because he was following Fonseca to see what was going on.

Additionally, Manuel testified that he turned to look into the console between the driver’s and passenger seat prior to the shooting. And, the video reveals that after Manuel closed the driver’s-side door of his car, he leaned to his right, opened the console, and looked into the console for approximately five seconds. Manuel’s testimony and the video show that he did, at the very least, turn away from the window and toward something else in his car.

Our inquiry into whether substantial evidence supports an instruction on unreasonable self-defense does not extend to evaluating Moreno’s credibility or to weighing his statements against the remaining evidence. We merely determine the “bare

legal sufficiency” of the evidence. (*People v. Breverman*, *supra*, 19 Cal.4th at p. 177.) To be legally sufficient, evidence cannot be “minimal and insubstantial,” to be sure. (*People v. Barton*, *supra*, 12 Cal.4th at p. 201.) Yet, a defendant’s statement—even if self-serving and uncorroborated—can constitute substantial evidence to support a jury instruction on unreasonable self-defense. (See *People v. Ocegueda* (2016) 247 Cal.App.4th 1393.) Here, Moreno’s statement that Manuel appeared to reach for something—while self-serving—is corroborated by Manuel’s testimony that he opened the center console, and by the video depiction of Manuel leaning away from the window toward the center of the car.

Mindful that we must review the evidentiary support for an unreasonable self-defense instruction in the light most favorable to Moreno, and should resolve any doubts as to the sufficiency of the evidence in favor of the accused, we conclude that the trial court erred in failing to instruct the jury on voluntary manslaughter based on unreasonable self-defense

III. Moreno Was Not Prejudiced by the Instructional Error

Had the jury been given an instruction on unreasonable self-defense and believed Moreno’s account of the events, they could have convicted Moreno of attempted voluntary manslaughter instead of attempted, premeditated murder. We do not conclude, however, that it is reasonably probable that the jury would have done so. In reaching this conclusion, we examine the strength of the evidence supporting the judgment relative to the evidence supporting a different outcome.

The only evidence supporting Moreno’s theory of the case are his self-serving statements that he acted in unreasonable

self-defense, Manuel's testimony that he opened the console next to his seat prior to the shooting, and the video evidence of Manuel turning away from the driver's-side window and toward the console before turning back and encountering his attackers. This evidence is very weak compared to the strength of the evidence supporting the judgment.

A. *Video and Physical Evidence*

Again, Moreno's statements that he believed Manuel had a gun and appeared to reach for something were self-serving. As was his testimony about covering his face with his shirt. Moreno stated he pulled up his shirt to wipe sweat away from his face. In the video, however, Moreno does not simply lift his shirt, wipe his face, and let go. Rather, Moreno grasps the neck of his t-shirt and rests it on his nose, effectively covering the bottom half of his face. And, Moreno's t-shirt remains in this position for the seven seconds before he fired into Manuel's car, during the shooting, and as Moreno turns to run away. It is far more probable that a jury would conclude that Moreno was attempting to avoid detection rather than simply wiping sweat from his face; such a conclusion strongly suggests that Moreno harbored an intent to kill prior to reaching the car and independent of any alleged fear he may have had for his own life.

More damaging to Moreno's argument that he acted in unreasonable self-defense is the video evidence that he had his right hand on his gun for the eight seconds that passed as he ran directly to Manuel's car. In the video, Moreno's hand is at his waistband slightly to the right of his navel. He appears to be clutching something. His hand stays in this position as he approaches the car, when he arrives at the car, and only moves

when he lifts the gun from underneath his waistband and fires into Manuel's car. Again, this evidence strongly suggests that Moreno developed the intent to kill long before he actually reached Manuel's car.

Moreno's testimony and statements that he deliberately attempted to avoid shooting Manuel by shooting into the back of the car are contradicted by the physical evidence demonstrating that all of the bullets landed in the front driver's and passenger seats. One landed in the upper portion of the passenger seat, two landed on the left side of the passenger seat, and another landed in the driver's seat itself. Had Moreno intended simply to scare Manuel, one would expect him to have shot at a different section of the car entirely.

Further, Moreno testified that Manuel was leaning downward when he shot at the car, which is how Moreno knew the bullets would not reach Manuel's body. The video, however, reveals that Manuel never leaned his body or head downward. Prior to the shooting, Manuel looked to his right when he opened the console, but was sitting upright as he peered into it. By the time Moreno arrived and fired four shots in Manuel's direction, Fonseca had been facing the window and looking directly at Manuel for at least three seconds.

B. *Gang Evidence*

The gang evidence also weighs against the probability that a jury would have found that Moreno harbored an actual belief that his life was in danger, as do his responses to questions about his active involvement in a criminal street gang. Although Moreno testified that he had not been active in the 18th Street gang since he was a juvenile, the jury viewed a picture of Moreno

at age 25 throwing a gang sign and displaying a gang tattoo the size of his entire torso. Moreno's testimony that he flouted his gang membership in a photograph not to demonstrate pride in his gang but for a "famous rapper" is not only self-serving but does not comport with the behavior of a "working man" who long ago renounced the gang lifestyle.

We also note that many of Moreno's statements damaged his credibility to the extent that the jury likely would not have credited Moreno's version of events. As discussed above, Moreno's attempts to distance himself from his gang are belied by the photograph in which Moreno proudly displays symbols of his gang affiliation. The amount of ammunition that Moreno stored in his mother's house suggests very strongly that Moreno was an active gang member at the time of the offense, as was the gang graffiti displayed on a piece of his recent mail. Moreno told a police officer in 2016 that he was a member of the 18th Street gang, disclosed that his moniker was Micky, and showed the officer his tattoos. And, Moreno's testimony that he did not notice a gang tattoo that covered Fonseca's entire right cheek is simply implausible.

IV. Conclusion

Based on the above, we conclude that the trial court erred in failing to instruct the jury sua sponte on attempted voluntary manslaughter based on unreasonable self-defense as a lesser included offense of attempted murder, as such an instruction is supported by substantial evidence. Moreno was not, however, prejudiced by the instructional error, as the evidence supporting his theory that he acted in unreasonable self-defense is so comparatively weak relative to the strength of the evidence

supporting the judgment that it is not reasonably probable Moreno would have obtained a more favorable outcome had the instruction been given. Accordingly, we affirm the judgment.

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

CURREY, J.*

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