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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. DESHON ATKINS, Defendant and Appellant.	B278735 (Los Angeles County Super. Ct. No. YA093316)

APPEAL from a judgment of the Superior Court of Los Angeles County, Hector M. Guzman, Judge. Affirmed as modified.

Stephen M. Hinkle, 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, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, Timothy L. O'Hair, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

Based primarily on evidence provided by law enforcement witnesses, a jury convicted defendant and appellant Deshon Atkins of the willful, deliberate, and premeditated attempted murders of Mark Beasley (count 4) and Dashon Wright (count 5) and found gang and gun enhancements to be true.[1] On appeal, defendant contends insufficient evidence supports his conviction for the attempted murder of Beasley and the gang enhancements; the prosecutor committed misconduct in closing argument, and defense counsel failed to object; and the trial court erred in failing to award him presentence conduct credit. The Attorney General concedes the latter point, and we modify defendant's abstract of judgment to reflect 235 days of presentence conduct credit. In all other respects, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Other than one eyewitness who described the shootings, but could not describe the shooters, virtually all the trial evidence came from investigating officers and a gang expert. We recount their testimony concerning the charges involving Beasley and Wright.[2]

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1 The jury acquitted defendant of three other counts of attempted murder arising out of a separate incident that occurred a week earlier.

2 As noted, defendant was acquitted of charges in the unrelated crimes, and we omit a recitation of the facts concerning those offenses.

We set forth only a summary of the offenses and the investigation here. Facts specific to the defendant's appellate issues will be detailed *post*.

The 107 Hoover Criminals and 10-Deuce Budlong Gangster Crips are rival gangs. A member of the 107 Hoover Criminals was murdered on April 2, 2012. Later that same evening, Beasley and Wright, members of 10-Deuce Budlong Gangster Crips, were standing on 102nd Street near Normandie when a gray or white Acura pulled up and blocked a driveway. An eyewitness stepping out of her car across the street heard someone in the car shout "Hoover." The eyewitness heard popping noises and ran for cover.

Wright was shot in his left leg and ankle, right thigh, left wrist, and back. Beasley was shot in his right middle finger.

Los Angeles County Sheriff's Department Detective Levi Belvillle responded to the scene of the shooting and was informed a silver sedan was involved. A few hours later, Detective Belville spotted a silver Acura traveling at a high rate of speed. He attempted to pull over the car, but it did not stop. During the pursuit, two firearms were thrown from the Acura. Eventually, the Acura crashed.

Defendant, a member of the 107 Hoover Criminals, and another gang member got out of the car and ran. A third firearm was tossed during the foot chase. Defendant was apprehended. His hands tested positive for gunshot residue.

Detective Belville retrieved the firearms thrown from the Acura. Nineteen cartridge cases and one expended bullet collected at the scene of the 102nd Street shooting were determined to have been fired from the recovered firearms. There were no fingerprints on the weapons. The third firearm was not found.

Los Angeles County Sheriff's Department Detective Derek White was assigned as the lead investigator for the

Beasley/Wright shootings. Detective White met with Wright on three occasions after the shooting. The first time was the following day, while Wright was in the ICU. The second time was a month later as Wright was preparing for his fourth surgery. On that occasion, May, 9, 2012, he showed Wright a six-pack photographic lineup containing defendant's photograph. Wright did not identify defendant as one of the shooters. The third interview was the next year, in 2013. Portions of the interviews were recorded, and the recordings were played for the jury.

Wright told an investigating officer he believed the 107 Hoover Criminals suspected the 10-Deuce Budlong Gangster Crips were involved in the murder earlier in the day on April 2, 2012, 107 Hoover Criminals shot in retaliation. Wright said Beasley was his best friend and was with him during the attack.

DISCUSSION

I. Sufficiency of the Evidence to Support Defendant's Conviction for Attempted Murder of Beasley

Defendant contends the only evidence of Beasley's presence at the scene of the shooting was hearsay testimony admitted not for its truth, but solely to impeach Wright. Alternatively, he argues evidence of Beasley's presence, if properly admitted, was unpersuasive. We disagree and find sufficient evidence supports the conviction.[3]

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[3] Defendant also discusses at length the transferred intent and "kill zone" doctrines, but does not expressly tie them to an appellate issue. The argument appears to suggest that Wright, with multiple gunshot wounds, and not Beasley, struck only in

A. Standard of Review

In *People v. Edwards* (2013) 57 Cal.4th 658, the Supreme Court set forth the standard of review when evaluating a challenge to the sufficiency of the evidence: "'[W]e review the entire record in the light most favorable to the judgment to determine whether it contains 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.'" (*Id.* at p. 715.) In considering whether substantial evidence supports a conviction, "we do not reweigh the evidence, resolve conflicts in the evidence, draw inferences contrary to the verdict, or reevaluate the credibility of witnesses." (*People v. Little* (2004) 115 Cal.App.4th 766, 771.)

B. Trial Evidence

Beasley was in state prison at the time of defendant's trial. No evidence was offered as to any out-of-court statements he might have made to law enforcement investigating the shootings.

Wright did appear at trial on July 25, 2016, under the compulsion of a subpoena. With a fair amount of prompting, he described his gunshot wounds and surgeries and the general layout of the neighborhood where the shooting occurred. He admitted he went to high school with Beasley. Otherwise he remembered very little, e.g., "I don't remember nothing," "I just woke up in the hospital," "I don't remember talking to any police." When asked a series of questions about whether he told investigating officers details of the shooting and the perpetrators, his invariable responses were "No, ma'am" or "No."

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his finger, was the intended target. No substantial evidence supports the application of either doctrine.

The prosecutor asked Wright, "Did you tell the detectives . . . that you were best friends with Mark Beasley who was the other victim of the shooting?" After he responded, "No, ma'am," defense counsel moved to strike that portion of the question asking whether Beasley "was the other victim of the shooting" on the basis it lacked foundation. The trial court overruled the objection. Counsel initially asked to approach for a sidebar, but the trial court provided the jurors with a routine admonition that advised in part, "an attorney may ask a question that assumes the existence of a fact. Unless the witness or other evidence in the case supports that, the attorney's question itself is not evidence. . . ." Defense counsel withdrew her request to approach and advised, "I will clarify on cross, your Honor." She did not return to the subject on cross-examination, however.

Wright was not the first or last witness whose memory failed. Several witnesses later, the trial court advised counsel outside the jury's presence: "[S]uffice it to say that with these witnesses, I allowed the prosecutor to impeach them with these prior consistent statements. If the record doesn't bear this out, I should indicate this court has found their answers were evasive and false, qualifying for examination under Evidence Code section 770."

Later that same day (July 25, 2016), Detective White took the stand and the following exchange occurred without objection:

"[Prosecutor]: Did Dashon [Wright] ever tell you about Mark Beasley being shot the same day he was at the same location?

"[Detective White]: In prior interviews we discussed that, yes.

"Q What did he tell you then?

"A That they were standing outside of 102nd, hanging out, and that's when the Acura drove up and Mark had been shot as well as him during that incident."

There was a break in the trial, and Detective Wright resumed his testimony on August 3, 2016. The detective had recorded portions of his interviews with Wright, and they were played for the jury. There was no mention of Beasley in the recorded interviews, and the prosecutor picked up that thread:

"[Prosecutor]: . . . [I]t's not on the recording. Did you ever ask [Wright] about who he was with or if he was with [Mr.] Beasley which has come up during this trial?

"[Detective White]: We had spoken about that, yes.

"Q What did he say about Mark Beasley?

"[Defense Counsel]: Objection. Hearsay."

With that objection, court and counsel adjourned to the hallway for an on-the-record sidebar:

"[Defense Counsel]: . . . I think at this point we're getting to where this officer is not only trying to impeach Mr. Wright who claimed at one point he was with Beasley and another point he said he didn't know Mr. Beasley—I think People are getting close to offering it for the truth of the matter that Mr. Beasley, in fact, was with Mr. Wright *and got injured*, and . . . that would be absolute hearsay, admitted for the truth of the matter—I would ask [the jury] be instructed that it should only be considered as to whether or not Mr. Wright told the truth about his relationship with Mr. Beasley." (Italics added.)

The trial judge asked whether the prosecutor was "trying to elicit from the detective statements made by Mr. Wright for impeachment purposes." The prosecutor responded, "Not for the truth of the matter. *I have an officer that will testify he went to*

the hospital, saw the injury to Mark Beasley on the same date and time." (Italics added.)

The trial judge asked defense counsel if she sought an instruction that the jurors "ought not to consider it for the truth of the matter asserted?" Defense counsel responded, "Only as it impeaches or substantiates." She added, "Just a cautionary instruction. It's been offered to impeach previous statements made by Mr. Wright."

Court and counsel wrapped up the discussion and when they returned to the courtroom, the trial judge told the jurors the prosecutor was about to ask a question "that sounds as if it may be interpreted as being offered for the truth of the matter asserted. That's why [defense counsel] objected." The court added, "these particular statements that were allegedly made by Mr. Wright to Detective White are not being offered for the truth of the matter asserted but being offered for the purpose of impeaching, impeaching or substantiating the testimony of Mr. Wright."

The following exchange then occurred:

"[Prosecutor]: . . . in regards to Mr. Dashon Wright in this interview, did he tell you anything about Mark Beasley, or if he was with Mark Beasley, anything of that nature?

"[Detective White]: He did say he was with Mark Beasley at the time of the shooting. Yes.

"Q Did he tell you if he witnessed Mark Beasley get any injuries?

"A He knew Mark had been shot too. Yes.

"[Defense Counsel]: Motion to strike. That answer is nonresponsive. It required a yes or no. It went beyond the court's ruling.

"The Court: Overruled. [¶] Again, I think it makes a little bit more sense. *These last two answers by the detective again are not being offered for the truth of the matter asserted* but to impeach or substantiate statements previously made by Mr. Wright on this particular topic. [¶] You may proceed." (Italics added.)

The prosecutor did so, moving on to a different topic.

Later that day, rather than call a witness to testify Beasley had been shot in the finger, the parties stipulated to that fact.

At the close of the prosecution case, defendant moved for acquittal on the Beasley attempted murder count: "I think there is absolutely no evidence of an attempted murder of Mark Beasley, period." The prosecutor countered with, "It was the impeachment of Dashon Wright. . . . [Beasley] was with Dashon at the time at the scene . . . ." The trial judge asked whether that was "problematic . . . [b]ecause didn't we discuss the limited nature of that testimony, that it's not being offered for the truth of the matter asserted? The prosecutor essentially replied it was a question for the jury. There was no additional argument, and the trial court denied the motion.

C. Analysis

A statement "made other than by a witness while testifying at the hearing . . . that is offered to prove the truth of the matter stated" is hearsay. (Evid. Code, § 1200, subd. (a).) "Except as provided by law, hearsay evidence is inadmissible." (Evid. Code, § 1200, subd. (b).)

As defendant asserts, Detective White's testimony concerning Wright's statement placing Beasley at the scene of the shootings was hearsay. That brief testimony was elicited twice:

first on July 25, 2016, the same day Wright denied telling Detective White that Beasley was there, and a second time on August 3, 2016. On the first occasion, the testimony was received without a hearsay objection or a court admonition to the jury.[4] A hearsay claim as to the July 25, 2016 testimony now has been forfeited. (*People v. Wheeler* (1992) 4 Cal.4th 284, 300.)

The failure to object does not alter our analysis, however. The trial court properly would have overruled a timely objection based on its finding that witnesses, including Wright, were intentionally evasive. Before Detective White offered this testimony, the trial court advised counsel the provisions of Evidence Code sections 770 and 1235 applied. Under oath, Wright denied ever talking to Detective White, much less telling him Beasley was present. The detective testified concerning Wright's inconsistent statements, and jurors were properly instructed they could consider that testimony for its truth. (See, e.g., *People v. Homick* (2012) 55 Cal.4th 816, 859 (*Homick*); CALCRIM No. 318.[5])

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[4] On July 25, 2016, defense counsel objected on the basis of lack of foundation, but that objection was overruled.

[5] The trial court instructed the jury with CALCRIM 318 as follows:

"You have heard evidence of statements that a witness made before the trial. If you decide that the witness made those statements, you may use those statements in two ways:

"1. To evaluate whether the witness's testimony in court is believable;

"AND

"2. As evidence that the information in those earlier statements is true."

On the second date, August 3, 2016, defense counsel did lodge a hearsay objection before Detective White could testify as to what Wright told him about Beasley. That led to the on-the-record discussion reproduced above and the trial court's admonition to the jury. Our review of the transcript persuades us the detective's testimony concerning whether Beasley was shot was not offered for the truth,[6] and the jury was properly so instructed.[7]

But the detective also reiterated his earlier testimony that Wright told him Beasley was at the scene of the shooting. While the sidebar focused on Beasley's injuries, the trial court's admonition was not so limited. The admonition can be fairly read as encompassing both aspects of Detective White's testimony. To the extent the trial court's admonition applied to evidence Beasley was standing with Wright when the shooting began, it was inconsistent with the court's earlier ruling under Evidence Code sections 770 and 1235.

The inconsistency only could have inured to defendant's benefit, however. The jury was properly instructed with CALCRIM Nos. 224 [if there are "two or more reasonable conclusions . . . and one points to innocence and another to guilt,

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6 That fact was established later the same day by stipulation.

7 CALCRIM No. 303 advised, "During the trial, certain evidence was admitted for a limited purpose. You may consider that evidence only for that purpose and for no other."

Despite Wright's recalcitrance, the record suggests he did not see Beasley shot and anything he said to Detective White would have been hearsay, making the detective's testimony double hearsay.

you must accept the one that points to innocence"], 302 [how to evaluate conflicting evidence], 303, and 318.

Moreover, the inconsistency did not appear to engender confusion during trial as to the admissibility of the evidence. The prosecutor referenced Beasley only briefly in her initial closing argument and not at all in her rebuttal.[8]

Defense counsel's closing argument stressed the paucity of the evidence placing *defendant* at the scene of the shooting: "There is very suspect testimony through tape recording that [defendant] was present at the time of the shooting of Dashon Wright that I would submit to you that that was based on police suggestion and inference as opposed to Dashon Wright's recollection." She had this to say about Beasley:

> As far as Mark Beasley goes, we don't know who he is, where he is—well, we know where he is now. But at the time of the offense, you know, Dashon Wright initially said he wasn't even there, and all of a sudden he is there. Nobody could identify him. I do think there is some kind of karma in the fact that [Deputy] Castaneda made such a big deal about the middle finger with the gang sign showing disrespect and supposedly the only injury Mr.

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[8] The prosecutor's only comments concerning Beasley were: "And Mark Beasley, you did not hear from Mark Beasley, yet a fifth gangster, and he is serving time in prison and could not join us, but what we know about Mark Beasley—and he is alleged as a victim nonetheless. You didn't get to hear from him. You didn't get to see him, but you heard evidence that he was standing on the street with Dashon Wright, and you heard evidence that he ended up in the hospital too with a gunshot wound to his finger."

> Beasley received was a gunshot to his middle finger. But I don't know what he was doing with [his middle finger] before that, and we don't really have any evidence of it, just an officer said he saw an injury to his middle finger. But perhaps that is the only karma that resulted out of this case."

Defense counsel characterized the case against defendant as being based on "a lot of speculation, a lot of inconsistencies, a lot of lies because . . . all the witnesses lied or committed perjury . . . . We've got police work that was never really completed, never undertaken seriously." She added, "If evidence is susceptible to two interpretations and both of those interpretations are reasonable and one points to guilty and one points to not guilty, you must adopt the one that points to not guilty."

The requirements of Evidence Code sections 770 and 1235 were met. At trial, Wright persistently denied making any statements to Detective White, including those that were preserved on audio recordings played for the jury. While Wright's statement concerning Beasley's presence at the scene was not recorded, his denials at trial justified the trial court's decision to permit the detective to repeat the Beasley statement and the jury to consider it for the truth. (*Homick, supra,* 55 Cal.4th at p. 859 ["As long as there is a reasonable basis in the record for concluding that the witness's 'I don't remember' statements are evasive and untruthful, admission of his or her prior statements is proper"].) We recognize the jury was given an inconsistent admonition during the evidentiary portion of the

trial. Any error on that score was harmless, however, in light of the jury instructions.[9]

Alternatively, defendant contends the evidence of Beasley's presence was insufficient because it was not corroborated by any of the recorded Wright interviews. Corroboration was not necessary and, as the jury was instructed, the testimony of one witness was sufficient. (CALCRIM No. 301.)

Based on our conclusion concerning the admissibility of the impeachment evidence for its truth, it is not necessary to separately address defendant's related claims of prosecutorial misconduct and ineffective assistance of trial counsel. The jury did hear "evidence that [Beasley] was standing on the street with Dashon Wright, and . . . he ended up in the hospital too with a gunshot wound to his finger." There was no misconduct in the prosecutor's so arguing. Without prosecutorial misconduct, defense counsel did not provide ineffective assistance by failing to object.

II. Sufficiency of the Evidence to Support the Gang and Firearm Enhancements

Defendant contends insufficient evidence supports the gang enhancements because the trial court erred in permitting the prosecution to adduce case-specific testimonial hearsay to establish the predicate offenses for those enhancements in violation of *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*). With insufficient evidence to support the gang enhancements, defendant contends the Penal Code section 12022.53,

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9 Defendant does not assert any instructional error.

subdivisions (d) and (e)(1)(a)[10] firearm enhancement must also be reversed. We disagree with defendant's arguments as to the gang enhancements and do not reach the companion claim concerning use of a firearm.

A. Standard of Review

We review a challenge to the sufficiency of the evidence to support a gang enhancement under the same principles as those related to a substantive offense. (*People v. Villalobos* (2006) 145 Cal.App.4th 310, 321-322.)

B. Gang Evidence

Los Angeles County Deputy Sheriff Ernesto Castaneda, an 11-year veteran of the department, testified as the prosecution's expert on the 107 Hoover Criminals gang.[11] Between 2008 and 2013, Deputy Castaneda was assigned to patrol out of the Lennox/South L.A. Station. That station served part of the territory claimed by the 107 Hoover Criminals. The 10-Deuce Budlong Gangster Crips also claimed territory in the geographic area served by the Lennox/South L.A. Station. During his patrol years, the deputy had personal contacts with members of both gangs. Deputy Castaneda became a gang investigator in 2013. By the time of this trial, he had testified as a gang expert on

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10 All statutory references are to the Penal Code.

11 Deputy Castaneda testified one month after the Supreme Court issued *Sanchez, supra,* 63 Cal.4th 665. From the transcript, we infer this was the first trial for the trial judge and counsel under *Sanchez*, and they engaged in several dialogues concerning how to comply with the requisites of the decision.

more than a dozen occasions, including as an expert on the 10-Deuce Budlong Gangster Crips.

Deputy Castaneda received law enforcement academy training on gang and gang culture. During his years on patrol, he arrested and assisted in arrests of "hundreds" of individuals, most of whom were gang members. He testified concerning gang culture in general and the 107 Hoover Criminals in particular. He described the 107 Hoover Criminals territory and the signs, symbols, and tattoos favored by members of that gang.

The gang expert identified the 10-Deuce Budlong Gangster Crips as a 107 Hoover Criminals' rival. Deputy Castaneda knew both Wright and Beasley from personal contacts. On the witness stand, he identified both of them from photographs.[12]

In terms of the predicate offenses to support the gang enhancement (§ 186.22; *People v. Ochoa* (2017) 7 Cal.App.5th 575, 581), the prosecution offered the following testimony:

"Q What are the primary activities of the Hoover Criminals?

"A Primary activities range from burglaries to possession of firearms, robberies, strong arm and armed, to vandalism, assaults with and without firearms, including attempt murders.

"Q Are you familiar with a person by name of Demageo . . . Hall?

"A Yes.

"Q Who is that?

"A He is a member of the 107 Hoover Criminals with the moniker of Infant Snap.

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[12] All prosecution exhibits were received into evidence at the conclusion of the People's case in chief.

"Q What's the basis for our knowledge of him?

"A Mr. Hall was involved in an incident which was — which Detective White was a gang expert in. Also I've had personal patrol contact with Mr. Hall during my time on patrol between 2008 and 2013."

At this point, the prosecutor introduced a certified court docket of Mr. Hall's 2011 conviction for murder and attempted murder. She then resumed her questioning of Deputy Castaneda:

"Q And, [Deputy], let me ask you, were you familiar with this particular case that Mr. Hall has the conviction on?

"A Yes.

"Q How are you familiar?

"A I spoke with—I spoke with Detective White who is the gang expert on that specific case."[13]

The prosecutor then introduced a second certified court docket pertaining to Darius DeAnthony Smith evincing two 2011 convictions for attempted murder. She returned to Deputy Castaneda:

"Q Are you familiar, [Deputy], with Darius Smith?

"A Yes.

"Q How are you familiar with him?

"A Through patrol contact through my time working patrol at Lennox Station[/]South L.A. station. Also, as I spoke to Detective Navarette who was the investigating officer and gang expert on that specific case.

"Q And was Mr. Smith a member of the 107 Hoover Criminals?

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13 There was no evidence this was the same detective who investigated this shooting.

"A Yes. With a moniker of Tiny Sinbad.

"Q Were both of those members of the 107 Hoover Criminals, Mr. Smith and Mr. Hall, when these crimes occurred?

"A Yes.

Concerning defendant, Deputy Castenada had seen him in the company of individuals he knew belonged to the 107 Hoover Criminals on "multiple" occasions and spoken with him "approximately three times" before this trial. The gang expert was familiar with defendant's tattoos. He explained their significance and relationship to the 107 Hoover Criminals.

Deputy Castaneda returned to the stand later in the trial. He described the gang significance of photographs retrieved from defendant's cell phone. He also answered a prosecution hypothetical based on the facts of the Wright/Beasley shooting and gave his opinion that the shooting was "in association with and for the benefit of a gang."

Defense counsel's cross-examination was limited. She only asked the gang expert whether, in his experience, drivers pursued by the police who throw items out the window and fail to stop are not always gang members.

C. Analysis

In *Sanchez, supra,* 63 Cal.4th 665, our Supreme Court observed, "The hearsay rule has traditionally not barred an expert's testimony regarding his general knowledge in his field of expertise. . . . [¶] By contrast, an expert has traditionally been precluded from relating *case-specific* facts about which the expert has no independent knowledge. Case-specific facts are those relating to the particular events and participants alleged to have been involved in the case being tried. . . . The expert is generally

not permitted, however, to supply case-specific facts about which he has no personal knowledge." (*Id.* at p. 676.)

The *Sanchez* court summed up its holding as follows: "When any expert relates to the jury case-specific out-of-court statements, and treats the content of those statements as true and accurate to support the expert's opinion, the statements are hearsay. It cannot logically be maintained that the statements are not being admitted for their truth. If the case is one in which a prosecution expert seeks to relate *testimonial* hearsay, there is a confrontation clause violation unless (1) there is a showing of unavailability and (2) the defendant had a prior opportunity for cross-examination, or forfeited that right by wrongdoing." (*Id.* at p. 686, fn. omitted.) Along the way to this conclusion, the Supreme Court also noted, "Any expert may still *rely* on hearsay in forming an opinion, and may tell the jury *in general terms* that he did so. Because the jury must independently evaluate the probative value of an expert's testimony, Evidence Code section 802 properly allows an expert to relate generally the kind and source of the 'matter' upon which his opinion rests. . . . There is a distinction to be made between allowing an expert to describe the type or source of the matter relied upon as opposed to presenting, as fact, case-specific hearsay that does not otherwise fall under a statutory exception." (*Id.* at pp. 685-686.)

Defendant does not challenge Deputy Castaneda's gang expertise or the bases for his background testimony. That testimony "was relevant and admissible evidence as to the [107 Hoover Criminals'] history and general operations." (*Sanchez, supra,* 63 Cal.4th at p. 698.) Defendant acknowledges "the facts of the [predicate] convictions are not in dispute, as the prosecutor had certified court dockets of the convictions." Defendant asserts,

"What is in dispute, however, is whether Hall and Smith belonged to the same gang as [defendant]. [Deputy] Castaneda said he based his conclusion on talks with a Detective White and a Detective Navarette," but neither of those individuals testified. This argument fails to acknowledge the gang expert's testimony that he knew Hall and Smith and knew they were members of the 107 Hoover Criminals from his personal, patrol-duty contacts with them.

While the gang expert also said he knew about these two individuals from conversations with gang detectives, he offered no details concerning those communications. On one hand, Deputy Castaneda's testimony may be viewed as not "case specific" within the meaning of *Sanchez* because it did not "relat[e] to the particular events and participants alleged to have been involved" in defendant's case. (*Sanchez, supra,* 63 Cal.4th at p. 676.) On the other, it may be fairly characterized as the traditional—and acceptable—hearsay an "expert may still *rely* on . . . in forming an opinion . . . ." (*Id.* at p. 685.) Under either view, the testimony did not run afoul of *Sanchez* or defendant's constitutional rights.

III. Presentence Conduct Credit

At sentencing, the trial court awarded defendant 1,568 days of actual presentence custody credit and, because defendant was sentenced to a life term, zero days of presentence conduct credit. In the trial court, the prosecutor and defense counsel agreed defendant was not entitled to presentence conduct credit. On appeal, both defense counsel and the Attorney General agree defendant is entitled to 235 days of presentence conduct credit under section 2933.1.

Defendant was convicted of two counts of willful, deliberate, and premeditated attempted murder. Under section 2933.1, a defendant convicted of attempted murder is entitled to presentence conduct credit, but that credit is limited to 15 percent of the defendant's actual days in presentence custody. (§§ 2933.1, subd. (a) & 667.5, subds. (c)(7) & (12).) Fifteen percent of 1,568 days is 235.2 days. We "round down" to 235 days. (*People v. Ramos* (1996) 50 Cal.App.4th 810, 815-816.) Accordingly, we order defendant's abstract of judgment modified to reflect 235 days of presentence conduct credit.

DISPOSITION

Defendant's abstract of judgment is ordered modified to reflect 235 days of presentence conduct credit. The judgment is otherwise affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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