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

THE PEOPLE,

Plaintiff and Respondent,

v.

JOADANUS JEROME OLIVAS,

Defendant and Appellant.

B229301

(Los Angeles County
Super. Ct. No. TA108118)

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

Meredith J. Watts, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Lance E. Winters, Assistant Attorney General, James William Bilderback II and
J. Michael Lehmann, Deputy Attorneys General, for Plaintiff and Respondent.

With regard to a May 29, 2009 gang-related shooting, defendant Joadanus Jerome Olivas was charged with five counts of attempted murder (Pen. Code, §§ 187, subd. (a), 664; counts 1-5)¹ and two counts of shooting at an inhabited dwelling (§ 246; counts 6-7). The jury found defendant guilty on all seven counts and also found true the allegations that he: (1) inflicted great bodily injury on the victims in count 1 (Antoin Vercher) and count 2 (Willie Brown) within the meaning of section 12022.7, subdivision (a); (2) personally used a firearm in counts 1 and 2 within the meaning of section 12022.53, subdivisions (b), (c), and (d); (3) personally used a firearm in counts 3, 4, and 5 within the meaning of section 12022.53, subdivisions (b) and (c); and (4) committed all seven counts for the benefit of a criminal street gang within the meaning of section 186.22, subdivision (b)(1)(C).

In this appeal from the judgment, we reject defendant's contentions of evidentiary error and insufficient evidence, but modify the sentence as to the firearm enhancement for each of counts 3, 4, and 5.²

¹ Unless otherwise indicated, all further statutory references are to the Penal Code. The attempted murders in counts 1 through 5 were not alleged to be willful, premeditated, and deliberate.

² Defendant, who was 16 years old on the date of the crimes, received a state prison sentence of 44 years to life.

On count 1, the base term, the court imposed a term of 44 years to life, consisting of the upper term of nine years for attempted murder (§§ 187, subd. (a), 664, subd. (a)), 10 years for the gang allegation (§ 186.22, subd. (b)(1)(C)), and 25 years to life for the gun allegation (§ 12022.53, subd. (d) [personal use of a firearm causing great bodily injury]). The court imposed an additional term of three years for the great bodily injury allegation (§ 12022.7, subd. (a)), which was stayed pursuant to section 654.

On count 2, which was identical to count 1, defendant received a concurrent term of 44 years to life.

On each of counts 3 through 5, defendant received a concurrent term of 39 years *to life*, but the trial court misspoke in imposing the life term. It correctly imposed the upper term of nine years for attempted murder (§§ 187, subd. (a), 664, subd. (a)) and 10 years for the gang allegation (§ 186.22, subd. (b)(1)(C)), but misspoke in imposing 20 years *to life* for the firearm enhancement, which should be 20 years (§ 12022.53, subd. (c)). The abstract of judgment, which erroneously refers to subdivision (d) of section 12022.53, must be corrected to reflect a 20-year firearm enhancement for each of counts 3 through 5

BACKGROUND

On May 24, 29, and 30, 2009, there were three shootings within the same part of Compton between the members of Campanella Park Piru Bloods (Campanella Bloods) and of the Tragniew Park Crips (Tragniew Crips). This case concerns the second shooting, on May 29, for which defendant, who belongs to the Campanella Bloods, was charged with five counts of attempted murder (counts 1-5) and two counts of shooting at an inhabited dwelling (counts 6 and 7). The prosecution's theory, as supported by the expert testimony of Detective Eric Arias of the Los Angeles County Sheriff's Department, was that defendant committed the May 29 shooting for the benefit of the Campanella Bloods in retaliation for the earlier May 24 shooting by the Tragniew Crips.³

Defendant contends on appeal that: (1) his trial was rendered unfair by the admission of irrelevant and unduly prejudicial evidence of other crimes, namely, the first shooting on May 24 and the third shooting on May 30; and (2) the evidence was insufficient to support his identification as the shooter in the second incident on May 29.

I. The Three Gang-related Shootings

The prosecution's evidence regarding the three gang-related shootings included the following:

The First Shooting. On May 24, 2009, a gang-related shooting that resulted in a murder occurred on the southeast corner of Rosecrans and Central Avenue, which is in

under section 12022.53, subdivision (c). With those corrections, the concurrent term for each of counts 3 through 5 is 39 years.

On each of counts 6 and 7, the court imposed a concurrent term of 17 years, consisting of the upper term of seven years for shooting at an inhabited dwelling (§ 246) and 10 years for the gang allegation (§ 186.22, subd. (b)(1)(C)), which was stayed pursuant to section 654.

³ Defendant challenges the sufficiency of the evidence to support his identification as the shooter, but does not otherwise challenge the sufficiency of the evidence to support the true findings on the firearm and gang enhancements.

the area claimed by the Campanella Bloods. The suspected shooter, who was not defendant, belonged to the Tragniew Crips. The murder victim, who was not a gang member, had relatives who are known members of the Campanella Bloods.

The Second Shooting (This Case). On May 29, 2009, the shooting in this case occurred at approximately 9:30 p.m. on Caswell Street, which is in the area claimed by the Tragniew Crips and is near the scene of the first shooting. Five people (the victims in counts 1-5) were standing in front of a house associated with the Tragniew Crips when a suspect opened fire with a rifle after stating, “this is Campanella Park Piru.” According to a 911 call made by one of the victims, the shooter and his companion were in a “blue Thunderbird.”

The Third Shooting. On May 30, 2009, a third shooting occurred at approximately 10:20 p.m. on Maie Avenue and 151st Street, which is also in the same area claimed by the Tragniew Crips. The shooter and his companion fled from the scene after crashing and abandoning a black 1994 Thunderbird. A pair of manicure scissors was found inside the abandoned Thunderbird.

II. The Evidence Linking Defendant and the Abandoned Thunderbird to the Second Shooting on May 29

The primary issue at trial concerned the identification of defendant as the shooter in the second shooting on May 29. The prosecution relied on circumstantial evidence of motive, intent, and modus operandi, as well as a victim’s pretrial identification of defendant during a photographic lineup.

The Shell Casings. Sheriff’s investigators recovered shell casings from the scenes of the second and third shootings. A criminalist from the sheriff’s department examined the casings and determined that they were fired from the same weapon, an AK-47 semi-automatic rifle. The weapon was never recovered.

The Stolen Thunderbird. The black Thunderbird that was crashed and abandoned by the assailants at the scene of the third shooting was identified as a stolen vehicle. The Thunderbird was taken from the carport of an apartment on Compton Boulevard on

May 29, the night of the second shooting. Based on evidence that the second and third shootings were committed with the same weapon on consecutive days and in the same vicinity by a suspect in a dark Thunderbird, the prosecution argued that it was reasonable to infer that the stolen Thunderbird was used in both the second and third shootings.

Defendant Confronted the Owner of the Stolen Thunderbird on May 30. On May 30, two members of the Campanella Bloods confronted Corvetta Morris, the owner of the stolen Thunderbird, in the carport where the car was stolen on May 29. During a photographic lineup, Morris identified defendant as one of the two men who had confronted her in the carport. Morris provided Detective Arias with the following information:

On May 29 at approximately 7:00 p.m., Morris parked her Thunderbird in the carport behind her mother's apartment on Compton Boulevard. At approximately 9:00 p.m., she heard the sound of a vehicle starting in the carport, but did not realize until the following afternoon that her Thunderbird had been stolen.

On May 30, Morris and her brother were waiting in the carport for the police to arrive to take her stolen vehicle report. As they were waiting, they were approached by two men. The shorter man said to her brother, "Where are you from? This is our neighborhood. This is Campanella Park." The shorter man, who had a darker complexion and tattoos on his face, was carrying a pair of manicure scissors and a gun.

Morris became upset and told the men that her brother did not gang bang. "She told them that she was having a bad day. She stated that she had just had her baby the day before and that somebody had stolen her car and she was not having a good day." When Morris mentioned that her car had been stolen, the men became "concerned with the fact that her car had been stolen. And at that point, the second individual, the taller, immediately started walking away from her and her brother . . . while yelling out 'This is Campanella Park.'" The shorter individual also left while yelling Campanella Park.

During a photographic lineup, Morris identified defendant as the "shorter, darker skinned [man], with a smaller Afro [and] tattoos on his face." Morris also provided a written statement: "This guy here in the picture is the guy that approached my brother

and myself. While talking to us, he showed us his gun/scissors. Basically they were letting my brother know that we lived in their neighborhood.”

Defendant Was Arrested for Auto Burglary. At about midnight on June 7, 2009, Deputy Sergio Jimenez was patrolling the area near 13625 Stanford Avenue in Compton when he spotted a man (defendant) in the driver’s seat of a parked van. Defendant’s chest was close to the steering wheel, his torso was tilted to the right, and his hands were beneath the dashboard. The driver’s door was slightly ajar and another man (Anthony Ray) was standing next to it. Defendant saw the patrol car, got out of the vehicle, and ducked behind the van with Ray as if to hide. The deputy ordered the men to come closer. Defendant dropped a screwdriver and Ray dropped a pair of scissors, which are common burglary tools for jumping the ignition of a car or prying open a window. After observing that the van’s ignition had been tampered with, the deputy contacted the owner and ascertained that the men did not have permission to enter it.

Defendant was arrested for auto burglary. As depicted in his arrest photograph, defendant is tattooed with the letters “P” and “CK” on his face, which in Detective Arias’s opinion, stand for Piru and Crip Killer. On defendant’s MySpace page, there is a photo of defendant displaying a gang color (red) and hand signal of the Campanella Bloods. The MySpace page lists defendant’s occupation as “Kill a Crab,” which means “Crab [Crip] Killer.”

A Victim Identified Photographs of Defendant and the Stolen Thunderbird. Detective Arias interviewed Marvin Kelly, the victim in count 3 of this case, on June 3 and 10, 2009. In his first interview, Kelly described the shooter’s vehicle “as a dark Ford Thunderbird with a shiny metal plate that ran along the side of the bottom portion of the vehicle.” His vehicle description matched that of the stolen Thunderbird that was abandoned during the May 30 shooting.

In his second interview, Kelly identified defendant during a photographic lineup and provided the following written statement: “This [is] the guy that shot at us the night of the shooting.” In addition, Kelly was shown a photograph of the stolen Thunderbird, which he identified as the vehicle used by the shooter in this case.

Defendant Matched the Physical Description of the Shooter. Detective Arias testified that defendant matched the physical descriptions of the shooter that were provided by several of the May 29 victims. None of the witnesses identified defendant in court,⁴ which Detective Arias explained was not unusual in gang-related cases. Antoin Vercher, the victim in count 1 of this case, gave a description in court of a Black male with a “little fro” or Afro hairstyle who was about five feet four to six inches tall. After observing defendant in the courtroom, Vercher testified that defendant and the shooter were similar in height. Vercher was shown a photograph of the stolen Thunderbird and testified that it was the “same Ford Thunderbird that drove by [his] house” on the night he was shot.

DISCUSSION

I. The First Shooting Was Relevant to Establish Motive and Intent in This Case

⁴ Morris testified that she did not remember the face of the man whose photograph she had selected during the photographic lineup. When Morris was shown a photograph of defendant at trial, she stated that the photograph was “very different” and that defendant “doesn’t look like the picture.” Morris testified that she did not remember seeing a gun, but she remembered telling the detective that the scissors were “like manicure scissors.” When Morris was asked about her earlier description of a very short person with a gun and scissors, Morris testified that she had described “a short guy.” Morris denied that she was afraid because the man had shown her a gun and yelled out the name of a gang. She also denied telling Detective Arias that two men in the courtroom lived down the street from her mother’s apartment. However, she acknowledged that she was “scared” and did not “want to give any information that . . . could lead to anything else.”

Similarly, Kelly did not identify defendant in court. Kelly acknowledged that he drew a circle around defendant’s photo during the photographic lineup, but denied that he wrote, “This [is] the guy that shot at us the night of the shooting.” Kelly also denied that he was afraid to identify the person in the photograph.

Detective Arias explained that victims of gang violence are often afraid to testify truthfully about what they saw and that it is particularly “bad” for a gang member or associate to be “labeled a snitch.” He stated that Morris had told him that she was afraid to testify and that Kelly, as an associate and suspected member of the Tragniew Crips, was reluctant to be identified as a snitch.

With regard to the first shooting on May 24, defendant contends that: (1) the prosecution improperly referred to it as a murder “in violation of the court’s order that the shooting not be identified as a *murder*”; and (2) the incident should have been excluded as “either irrelevant or far more prejudicial than probative under Evidence Code section 352.” The contentions lack merit.

The first contention assumes that the trial court prohibited the use of the word “*murder*” with respect to the first shooting. However, no such prohibition was in effect when the word “murder” was uttered in front of the jury. The trial court’s initial inquiry—“But you’re not going to refer to any other murders in front of the jury; right?”—was not an exclusionary ruling. Ultimately, only three facts were excluded from trial based on the notoriety of the first shooting: (1) the victim’s name; (2) the victim’s scholarship to USC; and (3) the name of the Louisiana Fried Chicken outlet where the victim was shot.⁵ In all other respects, the court stated, “I would let the crime in, *in its entirety*[,] as long as they didn’t go into parties.” (Italics added.) We therefore find no evidentiary support for the assumption that the prosecution was barred from referring to the first shooting as a *murder*. Accordingly, we need not discuss the contention of prosecutorial misconduct, which, assuming it was preserved for appellate review, is unsupported by the record.

We next turn to defendant’s contention that evidence of the first shooting should have been excluded as irrelevant. In determining that the first shooting was relevant, the trial court noted that it had formed the basis for Detective Arias’s expert opinion that the second shooting was a retaliatory shooting in a gang war. When viewed within the broader context of a possible gang war, it is clear that both the earlier shooting and defendant’s gang membership were relevant to establishing his motive and intent for committing the charged offenses.

⁵ The trial court stated, “I think it’s valid to bring up [the first shooting] as a basis for [Detective Arias’s expert opinion that there was a gang war going on]. But I think that there doesn’t need to be any mention that it was the Louisiana Fried Chicken incident, because it was so high media. And there doesn’t have to be any mention that the victim had a scholarship to USC.”

“[E]vidence of gang membership is often relevant to, and admissible regarding, the charged offense. Evidence of the defendant’s gang affiliation—including evidence of the gang’s territory, membership, signs, symbols, beliefs and practices, criminal enterprises, rivalries, and the like—can help prove identity, motive, modus operandi, specific intent, means of applying force or fear, or other issues pertinent to guilt of the charged crime. [Citations.]” (*People v. Hernandez* (2004) 33 Cal.4th 1040, 1049.)

Moreover, because defendant was charged with gang enhancement allegations, evidence of gang-related activity was admissible during the case-in-chief. “Nothing in section 186.22 suggests the street gang enhancement should receive special treatment of the kind given prior convictions. (See also §§ 190.1, subds. (a), (b), 190.2, subd. (a)(2), (22) [requiring the truth of a prior murder conviction special circumstance be tried only after the guilt determination, but other special circumstances, including a gang special circumstance like the gang enhancement of this case, be determined at the same time as the guilt determination].)” (*People v. Hernandez, supra*, 33 Cal.4th at p. 1049.)

Having determined that the first shooting was relevant to the determination of the charges and gang enhancements in this case, we turn to the remaining issue of undue prejudice. “In ruling on the question whether evidence is substantially more prejudicial than probative, the trial court enjoyed broad discretion. (Evid. Code, § 352.)” (*People v. Ayala* (2000) 24 Cal.4th 243, 282.) We have examined the record and find that the trial court acted within its considerable discretion in admitting a sanitized version of the first shooting. In order to prevent the jury from possibly identifying the first shooting as the highly-publicized killing of a scholarship student football player at a Louisiana Fried Chicken outlet, the trial court excluded the victim’s name, his USC scholarship, and the name of the restaurant. And to avoid any inference that defendant was involved in the first shooting, the trial court advised the jury that he was *not* a suspect and Detective Arias testified that the first shooting was “a shooting *unrelated* to this matter.” (Italics added.)

In addition, the trial court gave the following limiting instruction regarding evidence of gang activity: “You may consider evidence of gang activity only for the

limited purpose of deciding whether: [¶] The defendant acted with the intent, purpose, and knowledge that are required to prove the gang-related crime[s] [and] enhancement[s] charged; [¶] OR [¶] The defendant had a motive to commit the crime[s] charged. [¶] You may also consider this evidence when you evaluate the credibility or believability of a witness and when you consider the facts and information relied on by an expert witness in reaching his or her opinion. [¶] You may not consider this evidence for any other purpose. You may not conclude from this evidence that the defendant is a person of bad character or that he has a disposition to commit crime.”

Because the jury is presumed to have followed the limiting instruction (*People v. Delgado* (1993) 5 Cal.4th 312, 331) and because the trial court excluded facts that might possibly have allowed the jury to identify the first shooting as the murder of a promising young athlete at a Louisiana Fried Chicken outlet, we conclude that the evidence was not subject to exclusion under Evidence Code section 352.

II. The Third Shooting Was Relevant to Establish Defendant’s Identity

Defendant contends that the third shooting on May 30 was irrelevant to this case and, even if relevant, should have been excluded under Evidence Code section 352 as more prejudicial than probative. We disagree.

During an apparent Evidence Code section 402 hearing, the prosecutor informed the trial court and defense counsel of his intention to introduce the third shooting in order to establish that: (1) the suspects’ vehicle was “recovered and searched in a . . . crashed condition after the crime was committed”; and (2) the shell casings from the scenes of the second and third shootings were analyzed and found to have been fired from the same weapon. The prosecutor stated that he had no direct evidence linking defendant to the third shooting.

In response, defense counsel stated that although “it’s appropriate to introduce the details of the car [that] was recovered and what was in it,” it was not appropriate “[t]o go beyond that about a murder that occurred and the car fled the murder and the car crashed, I don’t see how that is relevant to these charges, particularly when there is no

[identification] of anybody involved in that murder or this car crash that relates to my client other than that somebody says male Black and that is it.” “So it’s certainly more prejudicial than probative, and I don’t even know that it’s relevant.” “What’s recovered in the car may be relevant. They may be able to make a link.”

In reply, the prosecutor stated that he would not introduce evidence that “the car was fleeing the scene of a murder,” but that he intended to show that the car was recovered and searched “in a crashed condition after the crime was committed.”

Defense counsel then stated, “I don’t have a problem with that.”

Pursuant to a stipulation by the parties, the jury was told that “on May 30, 2009, at approximately 10:20 p.m., Deputy Juarez from the County Sheriff’s Department . . . responded to a shooting at the scene of 151st Street and Maie Avenue . . . in Compton, California. And at that scene, the deputy recovered four 7.62 by 39-millimeter caliber cartridge cases and booked those items under U.R.N. No. 0009088862832011.” The jury was not informed that the third shooting involved a murder.

Given defense counsel’s statement that he had no “problem” with the admission of limited evidence of the May 30 shooting, which was given in the form of a stipulation of counsel, any objection based on relevance was forfeited. In any event, the May 30 shooting was clearly relevant to the prosecution’s case because several items that were recovered from the third shooting—including the shell casings, manicure scissors, and stolen vehicle—were relevant to establishing defendant’s motive and identity with regard to the offenses charged in this case.

Finally, we conclude that the trial court did not abuse its discretion by rejecting defendant’s objection under Evidence Code section 352 that the evidence was more prejudicial than probative. To the extent that the evidence recovered from the third shooting tended to incriminate defendant in an uncharged crime, the evidence was highly probative of defendant’s motive and identity with regard to the shooting in this case. The evidence was properly admitted. (Evid. Code, § 1101, subd. (b) [evidence of other crimes is admissible “to prove some fact (such as motive, opportunity, intent, preparation,

plan, knowledge, identity, absence of mistake or accident . . .) other than his . . . disposition to commit such an act”].)

III. Substantial Evidence Supports the Jury’s Verdict

Defendant contends that the evidence was insufficient to support his identification as the shooter. We conclude there was substantial evidence from which to identify defendant.

“In considering a claim of insufficiency of evidence, a reviewing court must determine ‘whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ (*Jackson v. Virginia* (1979) 443 U.S. 307, 319, original italics; *People v. Marshall* (1997) 15 Cal.4th 1, 34; *People v. Johnson* (1980) 26 Cal.3d 557, 578 . . .) Where, as here, the jury’s findings rest to some degree upon circumstantial evidence, we must decide whether the circumstances reasonably justify those findings, ‘but our opinion that the circumstances also might reasonably be reconciled with a contrary finding’ does not render the evidence insubstantial. (*People v. Proctor* (1992) 4 Cal.4th 499, 528-529.)” (*People v. Earp* (1999) 20 Cal.4th 826, 887-888.)

The jury’s identification of defendant rested on both direct and circumstantial evidence. The direct evidence consisted of Kelly’s identification of defendant as the shooter during a photographic lineup. (See Evid. Code, § 411 [generally, direct evidence of one witness is sufficient for proof of any fact].) Although Kelly disavowed his identification of defendant at trial, the evidence showed that he lived in a neighborhood of actively warring gangs and, as a suspected gang member, he would be reluctant to be labeled a snitch. Based on this evidence, “the jury could well have inferred . . . that the reason for [his] failure to make a positive identification at trial was simply that in the interim he had become reluctant to testify against this defendant.” (*People v. Ford* (1981) 30 Cal.3d 209, 215.)

The circumstantial evidence of defendant's identity included: (1) he fit the physical description of the shooter; (2) on the day after the second shooting, he accosted Morris in the carport where her Thunderbird had been stolen and showed her a gun and a pair of manicure scissors and identified himself as a member of the Campanella Bloods; (3) when he was arrested for auto burglary, he demonstrated his knowledge of the use of manicure scissors to jump the ignition of a car; (4) the shell casings from the third shooting and the stolen Thunderbird used in the third shooting were linked to the second shooting; and (5) based on the above evidence, it was reasonable to infer that defendant had stolen the Thunderbird in order to commit the second shooting in retaliation for the first shooting.

DISPOSITION

The judgment of conviction is affirmed. On each of counts 3, 4, and 5, the life term is stricken from the firearm enhancement, which is modified to 20 years under subdivision (c) of section 12022.53. The clerk of the superior court is directed to prepare

a corrected abstract of judgment and to forward a copy to the Department of Corrections and Rehabilitation.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.