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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN D. WALLACE,

Defendant and Appellant.

B233065

(Los Angeles County  
Super. Ct. No. MA 049674)

APPEAL from a judgment of the Superior Court of Los Angeles County. Lisa M. Chung, Judge. Affirmed.

Linn Davis, under appointment by the Court of Appeal; Kevin D. Wallace, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

\* \* \* \* \*

Defendant Kevin D. Wallace, along with codefendants Daquinn L. Tunstall and Tony L. Hobson, was charged by information with two counts of attempted murder (Pen. Code, §§ 664; 187, subd. (a)), as well as gang and firearm allegations (Pen. Code, §§ 12022.53, subds. (b), (c), (e)(1); 186.22, subds. (b)(1)(C), (b)(5)). The information was later amended to charge codefendant Edwin D. Turner as the person who personally discharged a firearm, and as a felon in possession of a firearm (Pen. Code, §§ 12021, 12022.53, subds. (b), (c)), in addition to the offenses and enhancements alleged against the others. The defendants were tried separately.

Defendant was convicted on count 1, but the jury deadlocked on whether the attempted murder was willful, deliberate, and premeditated. The jury also deadlocked on count 2, resulting in a mistrial. All corresponding allegations for count 1 were found true. Defendant was sentenced to the high term of nine years on count 1, as well as a consecutive 20-year enhancement under Penal Code section 12022.53, subdivision (c). The gang and remaining firearm enhancements were imposed and stayed. Defendant entered a no contest plea to an added criminal threats count (Pen. Code, § 422) for a concurrent three-year term, in exchange for the dismissal of the deadlocked attempted murder count and premeditation allegations. Defendant filed a timely notice of appeal.

We appointed appellate counsel to represent defendant. Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) in which no issues were raised. Defendant filed a supplemental brief identifying four issues: (1) the admission of photographs of defendant's tattoos, when defendant's trial lawyer "didn't know anything about that and the DA did not tell him that he was going to do that"; (2) the sufficiency of the evidence for the firearm enhancement because defendant "didn't even know that a gun was even in the car"; (3) the length of the 20-year firearm enhancement; and (4) whether defendant's juvenile record justified imposing the high term of nine years on count 1. Finding no arguable appellate issues, we affirm.

## **FACTS**

The following evidence was adduced at trial. On May 12, 2010, at the Shadow Springs apartment complex in Palmdale, California, defendant, Tunstall, Hobson, and

Turner approached Lakisha Jefferson as she walked to her car. They asked for a ride to the convenience store. Jefferson knew Turner and had seen the others at the apartment complex. Since she was on her way to the same store, she gave them a ride. When she parked at the gas station convenience store, defendant and his cohorts got out of the car, and one of them told her to remain in the car. As she waited in the car, a vehicle pulled behind her. Its two occupants, John Does 1 and 2, walked by her car and went into the store. John Doe 1 brushed against Turner. John Does 1 and 2 then left the store quickly, asking defendant and his cohorts, “Where are you from?” They answered “5th,” and John Does 1 and 2 said they were from “BOP.” John Does 1 and 2 took fighting stances, putting up their fists, and one of defendant’s cohorts took off his sweatshirt. It looked as if there was going to be a fight. Jefferson did not want to be involved, so she put her car in reverse. She then heard “pop, pop,” and saw people running. As she was backing up, three of the men jumped in her car. She returned to the apartment complex, and the three got out of her car and ran in different directions.

Store security cameras recorded the incident, and the videos were played for the jury. Gang Detective Richard O’Neal reviewed the video and was able to identify Hobson, Tunstall, Turner and defendant. The video depicted John Does 1 and 2 running from the store to their car, followed by Turner. An audio recording captured an unknown male voice asking, “Where you from then?” Another voice asked, “Where the f--- you from?” followed by two gunshots. When John Doe 2 ran towards the car, defendant, Hobson, Turner, and Tunstall ran in the same direction. Tunstall removed his sweatshirt. The security videos showed Turner with a gun.

Detective O’Neal interviewed Turner, who admitted he asked John Does 1 and 2, “Where are you from?” He also interviewed defendant, who waived his *Miranda*<sup>1</sup> rights. Defendant denied any gang affiliation, or being a member of 5th Blocck Goons, even though he had a “Goon” tattoo. He said he walked to the store with his brother, Tunstall.

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<sup>1</sup> *Miranda v. Arizona* (1966) 384 U.S. 436.

When he heard gunshots, he ran. After being confronted with the store's security videos, he admitted he arrived at the station in the car with the others. He denied any involvement in the shooting.

Detective O'Neal testified that gangs operate differently in the Antelope Valley than they do in Los Angeles, because in the Antelope Valley there is no clearly defined turf. Members of different south Los Angeles gangs will often associate and form alliances against local Antelope Valley gangs, such as Bloods On Point or B-O-P.

Detective O'Neal located two field interview cards for defendant. An October 13, 2006 card did not list a gang affiliation, but the July 19, 2007 card identified defendant as a member of All For Crime, a Blood gang based out of south Los Angeles. Field interview cards for Tunstall, Turner, and Hobson listed them as members of the Pacoima Piru, East Side 5th Goons, and Leuders Park Piru gangs, respectively.

During his investigation of this case, Detective O'Neal first learned of East Side 5th Blocck Goons, a newer gang. The gang was a few years old, with approximately 30 members, and identified itself by "Goon," "G5XN," and "FBG." Appellant had a "Goon" tattoo, filled in with red ink. Turner had 5th Blocck Goons tattoos, and a tattoo of "B-O-P" crossed out. The gang's territory is the Shadow Springs apartment complex and another apartment building on 5th Street East and Avenue R. Both defendant and Turner live in the Shadow Springs complex.

The primary activities of the gang include vandalism, graffiti, assaults, and gun possession. Turner had a March 10, 2010 conviction for gun possession. The stairwell leading to Turner's apartment had gang graffiti, including "ES 5th Blocck Goons," "B-O-P" crossed out, and "YG POP A Flop," meaning "young gangster . . . shoot a B-O-P gang member" ("POP" being a derogatory name for the BOP). The "cck" in 5th Blocck Goons stands for "crip killer." To cross out another gang means there is a hit out on that gang.

Detective O'Neal opined Turner was a member of 5th Blocck Goons because he was self-admitted, and because of his tattoos and documents on his MySpace account. O'Neal opined defendant was a member because of his association with Turner and his "Goon" tattoo.

In gang culture, asking someone where they are from is a challenge, resulting in shootings or stabbings. When gang members travel together, they usually designate one member to carry a gun.

Given a hypothetical based on the facts of this case, Detective O’Neal opined that the crime was committed for the benefit of and in association with a criminal street gang.

Defendant testified he did not hang out with Turner, and that he got the “Goon” tattoo because Plies is his favorite rapper, who calls his fans “my goons.” He got the tattoo four years ago, when he was 16. Defendant did not know Turner had a gun.

After defendant was convicted of count 1, and the corresponding gang and firearm allegations were found to be true, the trial court sentenced him to the high term, citing his extensive juvenile criminal history, his unsuccessful performance on probation, as well as the concerted and violent nature of the crime as aggravating circumstances.

### **DISCUSSION**

In his supplemental brief, defendant does not raise any arguable appellate issues. He makes broad and unsupported claims regarding the length of his sentence, the admission of evidence that he believed surprised his attorney, and the sufficiency of the evidence. These contentions are not supported by citations to the record or to any applicable law. “Where a point is raised in an appellate brief without argument or legal support, ‘it is deemed to be without foundation and requires no discussion by the reviewing court.’ [Citation.]” (*People v. Murray* (2008) 167 Cal.App.4th 1133, 1143.) Defendant’s failure to provide citations to the record, legal argument, or authority forfeits these issues on appeal. (*People v. Hovarter* (2008) 44 Cal.4th 983, 1029; *People v. Meyer* (1963) 216 Cal.App.2d 618, 635.)

Notwithstanding defendant’s failure to support the assertions in his supplemental brief, we have examined the entire record, including the videos and exhibits admitted into evidence. Based on that independent review, we are satisfied that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106; *Wende, supra* 25 Cal.3d 436.) There was no objection to the claimed evidentiary error concerning the photographs of defendant’s tattoos. Trial counsel’s comment to defendant that he was “surprised” by the

photographs is outside the appellate record. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.) There was sufficient evidence that defendant knew Turner had a gun, based on his reaction to events depicted in the video and Detective O’Neal’s gang culture testimony. And, the 20-year firearm enhancement is clearly authorized by Penal Code section 12022.53. (Pen. Code, § 12022.53, subds. (c), (e)(1).) Lastly, the high term on the attempted murder count is justified by numerous aggravating factors, such as defendant’s prior record and the circumstances of the crime. (Penal Code, §§ 190, 664, subd. (c); Cal. Rules of Court, rules 4.420(b), 4.421.) We therefore affirm the judgment below.

### **DISPOSITION**

The judgment is affirmed.

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GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.