Filed 8/30/12 P. v. Graves CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. ALEX DEMETRIUS GRAVES, Defendant and Appellant.	B227100 (Los Angeles County Super. Ct. No. TA097218)

APPEAL from a judgment of the Superior Court of Los Angeles County. David Sotelo, Judge. Affirmed.

Susan Pochter Stone, 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, Scott A. Taryle and John Yang, Deputy Attorneys General for Plaintiff and Respondent.

Defendant and appellant Alex Demetrius Graves (defendant) appeals his conviction for murder and attempted murder. Defendant asserts a violation of the *Aranda-Bruton* rule, which precludes the admission of a statement or confession of a nontestifying defendant if the statement incriminates a codefendant in a joint trial.[1] He contends that without the subject statement his convictions would be unsupported by substantial evidence. As we find no error and if so it was harmless, we affirm the judgment.

BACKGROUND

1. Procedural background

In a seven-count information, defendant and codefendants Maurice Bennett (Bennett) and Robert Maxwell (Maxwell) were charged in count 1 with the murder of Kyutza Herrera (Herrera), in violation of Penal Code section 187, subdivision (a).[2] In counts 2 through 5, defendant, Bennett, and Maxwell were charged with the willful, deliberate, and premeditated attempted murder of Carlos Avila (Avila), Timothy Ledford (Ledford), Ronald Davis (Davis), and Marcello Martinez (Martinez), in violation of sections 664 and 187, subdivision (a). Defendant was charged in count 6 with the discharge of a firearm in a grossly negligent manner, in violation of section 246.3, subdivision (a). In count 7, defendant and Bennett were charged with carrying a concealed firearm in a vehicle, in violation of section 12025, subdivision (a)(1).

As to all counts, the information specially alleged pursuant to section 186.22, subdivision (b)(1), that the crimes were 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. The information specially alleged as to counts 1 through 5, for purposes of section 12022.53, subdivisions (b), (c), (d), and (e)(1), that a principal personally used and intentionally discharged a handgun.

---

[1] See *Bruton v. United States* (1968) 391 U.S. 123 (*Bruton*); *People v. Aranda* (1965) 63 Cal.2d 518 (*Aranda*).

[2] All further statutory references are to the Penal Code, unless otherwise indicated.

Defendant was tried jointly with Bennett and Maxwell. Defendant shared one jury with Bennett while Maxwell had another jury. Defendant was found guilty of count 1, but the jury could not reach agreement as to the degree of the murder, and it was deemed to be of the second degree. The jury found defendant guilty as charged in the remaining counts and found true all special allegations.

On August 13, 2010, the trial court sentenced defendant to a total prison term of 168 years to life plus two years eight months, as follows: (count 1) 15 years to life, plus 25 years to life for the gun enhancement; (count 2, 3, 4, and 5 each) seven years to life, plus 25 years to life for the gun enhancement; (count 6) a determinate base term of two years (the middle term); and (count 7) a determinate term of eight months (one-third the midterm). The trial court did not impose three of the firearm enhancements or the gang enhancement. The court imposed mandatory fines and penalties, and awarded 826 actual days of presentence custody credit.

Defendant filed a timely appeal from the judgment.

2. Prosecution evidence

Ace Liquor Store shooting

On the evening of August 4, 2007, Avila parked in front of the Ace Liquor Store on Long Beach Boulevard in Lynwood to buy snacks for Herrera, his girlfriend and passenger. Ace Liquor Store was located in a neighborhood claimed by the Palm and Oaks Crip gang, a rival of the MOB Piru gang. Members of the Palm and Oaks Crip gang typically wore blue.

Davis and Ledford were also at Ace Liquor Store that evening with their friends Bobby Patrick and Gregory Smith, who entered the store while Davis and Ledford waited outside. Ledford was wearing a blue shirt. After Avila and Herrera returned to Avila's car, there came the sound of squealing tires and gunshots. Davis testified that he heard 22 to 45 gunshots in all, and saw muzzle flashes coming from the front passenger seat of a white Camaro moving south on Long Beach Boulevard. Davis and Ledford ran into the store to the sound of flying bullets and breaking glass.

Kassandra A., a minor, testified that she was across the street from the liquor store when she heard gunshots and breaking glass and saw two men run into the store as a Mustang slowly moved south on Long Beach Boulevard. She saw bullets strike the car parked in front of the store. It appeared to her that the gunshots came from the Mustang, which sped up after the shooting stopped. Jessie Reyes was also across the street from the liquor store at the time of the shooting. He reported hearing multiple gunshots and then saw a white Camaro and a gray Mustang moving southbound on Long Beach Boulevard.

When the gunfire ended, it was discovered that Davis had been shot in the foot and Ledford had suffered a grazing wound to his hip. Herrera had been shot in the neck and died from the wound a few days later. Bullet holes were later found in Martinez's car which was parked in front of the liquor store.

There were a total of 16 surveillance cameras from inside and outside the liquor store and the nearby gas station. Investigators viewed the footage and portions were played for the jury showing a gray or silver Mustang and a white Camaro pass in front of the liquor store. Davis and Ledford can be seen running into the store as gunfire erupts.

Los Angeles County Sheriff Department (LASD) deputies found multiple .30-caliber carbine (rifle) casings, as well as .40-caliber casings, scattered along Long Beach Boulevard and the front of the liquor store.

Related shootings

1. On August 21, 2007, Earnest Grayson was shot multiple times on Carlin Avenue in Lynwood, a few blocks from Ace Liquor Store in an area also claimed by the Palm and Oaks gang. Alejandra Guerrero saw a gray or silver Mustang traveling east on Carlin Avenue with a second car following it shortly after the shooting. Eight .40-caliber casings were found and collected from the crime scene.

2. On August 24, 2007, Edward Lair, wearing a blue shirt and a Dodger baseball cap, was with his friend Mac Richardson at Tommy's Mechanic Shop on Rosecrans Avenue in Compton, waiting for a battery charge, when he heard multiple gunshots. When the shooting stopped, Lair realized he had been hit by 13 bullets in both arms, a

leg, and his abdomen. Richardson had been shot four times. Lair did not see the shooter, but Rosalie Bardwell observed the shooting and saw two cars accelerating to a high speed away from the scene. One car was following the other so closely that she thought the occupants were shooting at each other. One was a white Mustang[3] and the other was a dark blue Honda. Ten .40-caliber casings were found on the ground near Rosecrans Avenue.

3. On October 31, 2007, Heriberto Norori was shot in the abdomen outside the Gaucho Grill restaurant on Beverly Boulevard in Los Angeles. A black SUV approached the restaurant, and Norori saw an African-American man step out and fire what appeared to be a semiautomatic handgun. Los Angeles Police Department (LAPD) officers arrived shortly after the shooting, and within minutes, they heard more gunshots. In the direction from where the noise came, a gray Mustang and a black SUV were seen speeding away. Officers pursued and stopped the SUV and the Mustang.

The SUV's occupants were identified as Warren Phillipus (Phillipus) and Andrew Haley (Haley). Haley's address on Killen Court in Compton was later determined to be defendant's address, as well. The officers searched the SUV and found a .380-caliber semiautomatic handgun on the floorboard behind the driver's seat.

When other officers stopped the Mustang, which was later determined to belong to defendant, codefendant Bennett was in the driver's seat and defendant was the front passenger. A search of the car yielded an empty Springfield semiautomatic .40-caliber handgun behind the back seat. The handgun was later determined to be the same weapon that was used to kill Herrera.

Ballistics evidence

Firearms expert, retired LASD Deputy Dale Falicon, determined that the handgun recovered from defendant's car after the Gaucho Grill shooting was the same .40-caliber

---

3 LASD Homicide Detective Eddie Brown testified at trial that he was familiar with the particular silver paint used on defendant's Mustang, and under certain lighting, it appeared to be white. He produced photographs of defendant's silver Mustang which illustrated the point.

weapon that was used to shoot Herrera. He also examined the .40-caliber shell casings recovered from the area of the Gaucho Grill, and those recovered from the Grayson shooting, and determined that they too had been fired from the murder weapon. Deputy Falicon also concluded that the .30-caliber, M-1 carbine rifle seized from defendant's post office coworker, Sergio Moran (Moran), had fired seven of the .30-caliber cartridge cases found at the Ace Liquor Store shooting.

Visual and wiretap surveillance

Detective Brown suspected that members of the MOB Piru gang had committed the liquor store shooting, in the territory claimed by their rivals, the Palm and Oaks gang. After searching the MOB Piru neighborhood he found a 1984 white Camaro parked on Palm Avenue. He further identified the driver as codefendant Maxwell, and observed the Camaro as it was approached by several young African-American men dressed in gang attire.

In March and April 2008 after Detective Brown had arranged for the California Department of Justice (DOJ) to conduct visual and wiretap surveillance, he produced and distributed a flier with the hope of stimulating telephone conversations about the shooting. The flier contained photographs of Herrera, a Mustang, and a Camaro. The fliers were passed out in the suspects' neighborhood and one was left at defendant's Killen Court residence. Detective Brown also made a short video clip of the shooting which was aired during several newscasts.

During visual surveillance outside the Killen Court residence, DOJ agents saw defendant driving the silver Mustang, and saw him associating with Haley, Phillipus, and others. On March 20, 2008, agents observed defendant as he appeared to purchase a .40-caliber handgun from the occupants of a dark colored Honda parked near defendant's Mustang outside his residence.

Agents conducted wire surveillance of four "target" telephone numbers, including one belonging to defendant. The conversations were recorded and portions played for the jury.

In March 2008, defendant spoke to his coworker, Moran. Moran inquired about "the gun," and they discussed a price. Moran said he would get the money and pick it up. A few days later, Moran telephoned to tell defendant that he was going to take the gun to the Azusa Canyon shooting range the following day.

LASD personnel notified the Azusa City Police Department, which sent officers to the shooting range to wait for Moran. The officers detained Moran and seized the rifle, an M-1 .30-caliber carbine. After it was confiscated, a deputy sheriff telephoned Moran to determine where he had obtained the rifle. In turn, Moran telephoned defendant who told Moran not to tell the police that Moran had obtained the gun from him.

In late April 2008, agents recorded conversations between defendant and his girlfriend Markia Tyree (Tyree). Tyree testified regarding those conversations. She confirmed that defendant was upset about some fliers in which his car appeared. He told Tyree that he had to get a new car "quick," but he would not tell her the reason over the telephone. Later, defendant twice telephoned Tyree from a car dealership, and told her that he had to "get rid" of his car.

Tyree testified that defendant was very upset about the fliers and told her that "they had done something." He said he had to get rid of his car because of what happened and that someone had bad aim and an innocent person had been hit. Because Tyree worked for the Manhattan Beach Police Department, defendant asked her to run his license plate number through the police database. She searched but found nothing recent.

Defendant's telephone conversations with others were also played for the jury with gang expert Detective Richard Sanchez translating some of the gang jargon used in the conversations. "Blood" meant a member of the Blood gang. In one conversation, Haley referred to defendant as "Blood" and to himself as a "P homie," meaning they were both members of the MOB Piru gang, a Blood gang. Haley said he was going to dress in red and black, which were the colors of the MOB Piru gang. Defendant's statement, "I'm going to pop if you don't put that on Piru," meant that Haley could trust defendant due to his MOB Piru gang membership -- the equivalent of the expression, "Scout's honor." When defendant spoke to Bennett, he said, "I'm in the hood, Blood," meaning he was in

his gang's territory. Defendant also said he was "outside Blood gang banging," which meant he was associating with the gang, standing outside wearing the gang's colors and "flashing" or "throwing" gang signs. Detective Sanchez explained that "180" was gang slang for Penal Code section 187 and thus meant murder.

In one recorded conversation, defendant told MOB Piru gang member "Whitey" that defendant was at a dealership to buy a car. In another, defendant spoke to Haley and told him that defendant had "already seen that shit" and was going to get "get rid of" it that week. Defendant also spoke to "Keith," identifying him as a gang member by calling him "Blood." Defendant told Keith that he was "too upside down" and had to "get rid of that mother fucker." Defendant asked whether Keith knew someone who could do it for him. In a conversation with his sister, Alexis Graves (Alexis), defendant told her he was going to come and stay with her because the police were harassing everybody. The next day, defendant called Bennett, told him that it would be costly to get rid of the "gray thing" and that defendant would buy the Impala as soon as he received his tax refund. Defendant also complained to Bennett that someone was "running their mouth" to the police, and said that if anyone "goes down . . . everybody will eat their shit."

On April 26, 2008, defendant telephoned the L.A. Autoplex car dealership on Firestone Boulevard to inform "Joey" that defendant would be there that day to buy the car they had discussed. That evening, defendant telephoned Tyree and Haley to tell them he had purchased the new car. Wiretap investigators notified LASD, and Detective Joe Espino recovered defendant's Mustang from the dealership.

Reactions to Bennett's arrest

Detectives Brown, Sanchez, and Espino spoke to Bennett at his residence on May 7, 2008. Detective Brown told him they were investigating the murder of the young woman at the Ace Liquor Store which was shown on the news and asked him to come to the station for an interview. Although Bennett initially denied involvement, he agreed to go with them to the station. After the interview, Bennett was arrested.

Bennett's arrest resulted in a flurry of telephone calls. At 3:43 p.m. on the same day, defendant told his sister that Bennett had been taken to jail and he did not know why. Alexis looked on the Internet and found that Bennett was expected to be released that day. A few minutes later, defendant received a call from Miguel Brandon (Brandon) who asked for "Mo's" real name. Defendant replied, "Maurice Bennett" and told Brandon that he had checked the Internet and could not find out why Bennett had been arrested.

A minute after the call from Brandon, defendant telephoned "E" and asked what had happened. E said that Bennett had been picked up by the homicide bureau and that his bail had been set at a million dollars, but E did not know whether the district attorney was trying to "bring that case back on him." Defendant replied, "It wasn't no homicide." Five minutes later, defendant called Brandon, gave him the spelling of Bennett's last name so that he could search for information, and told him to find Whitey.

Defendant then called Michael Washington (Washington), who was also known as Keith, and they discussed the arrest. Defendant repeated that Bennett had been arrested by the homicide division and his bail had been set at one million dollars; they agreed this meant that Bennett had been charged with murder. Washington then asked defendant, "Was Mo with ya'll?" When defendant asked, "When?" Washington said, "You know what I'm talking about." Defendant replied, "Uhhh . . . I think, yeah."

Washington then said that Haley had "said something." A moment later, defendant discovered that Phillipus had been arrested by DOJ, but he did not know on what charge. After more conversation about Bennett, Washington explained that he had just been in the car with "Murder" and "that's why [he] was speaking in code." Washington had taken Murder to "get an estimate, on his shit, but yeah, that's crazy man! For that shit just to be happening like that. That's what I'm saying. But see . . . what I was thinking that they get license plates, but I doubt that because if they did they would've been came, you know what I mean?"

After another call from defendant's sister about Bennett's bail, defendant telephoned Tyree to tell her that "the police got Mo." Defendant said that Mo's father

had money for bail, and that he did not believe the police had evidence to charge him. Later that evening, someone named Brown called defendant and was told that "Mo is in jail." Brown asked, "For?" Defendant replied, "For the one eighty."

Bennett's confession

Bennett's interview with the detectives was secretly recorded. The redacted recording was played for the jury.[4]

Bennett told the detectives that he had been in Maxwell's white Camaro at the time of the Ace Liquor Store shooting. Bennett had gone with Maxwell to the "Killen Quarters" cul-de-sac, where they met the other participants in the shooting. The Killen meeting place was their "hang out spot place." Someone handed Bennett the rifle, but he could not remember who.

They then went patrolling the Palm and Oaks neighborhood, and targeted the men standing outside the liquor store because they were "more than likely" Palm and Oaks gang members. Bennett did not know the men. Only Bennett and Maxwell were in the white Camaro. Bennett was in the passenger seat when "the [redacted] car started shooting so [Bennett] just started shooting in the air" with the M-1 rifle and fired until the ammunition ran out. Bennett claimed that he did not aim at anyone, but just shot because "they were shooting." Bennett explained that the reason he fired the weapon was that "if you be in a gang you want recognition for . . . doin' shit." Afterward, Bennett picked up his car and drove home. He left the rifle in the Camaro.

One of the participants in the liquor store shooting was Lindsey, nicknamed "Lizard." Bennett claimed that Phillipus was not there and did not participate in the

---

[4] The recording was reviewed and redacted "per [defense counsel's] agreement and stipulation." Before it was played to the jury the trial court admonished them: "You may consider this evidence only against Mr. Bennett and not against Mr. Graves. In other words, do not consider Bennett's statements to investigators in assessing Graves's guilt. Also, certain irrelevant material is deleted and redacted from the interview by agreement of the parties, the attorneys. Do not speculate as to what the material might have been or why it was deemed irrelevant. Redacted just means removed."

shooting. When the detectives asked him to identify persons depicted in a photographic lineup he refused, concerned that giving information to the police would show "on [his] paperwork" in jail, which "could be real bad." Bennett denied knowing about the shooting at the mechanic's shop on Rosecrans Avenue.

Tyree interview and jailhouse recording

Detectives Brown and Espino interviewed Tyree at her place of employment and described the wiretapped calls for her. She told them that she had seen the shooting video on the Internet and that she recognized defendant's car. When defendant learned about the interview, he was upset that she had spoken to the detectives. In September 2008, after defendant's arrest, he called her from jail. Defendant said that he could not understand why she would tell the police the truth, and they argued. Tyree explained that because the detectives showed her the evidence, she could not "deny it"; and that if she withheld information, she would be an accessory.

Gang evidence

Based upon his experience and the information collected by law enforcement, Detective Sanchez opined that defendant, Bennett, and Maxwell were active members of the MOB Piru gang, a criminal street gang that claimed the northeast portion of Compton as its territory.[5] Gang members "put in work" for their gang by committing violent crimes, which serves to maintain and enhance their reputations within the gang. More violent crimes earned greater status for the member. The gang's primary activities consisted of murder, assault, possession and selling of firearms, robbery, burglary, narcotic sales, vandalism, and petty theft.

Gangs usually defended their territory with graffiti and by committing violent crimes against rivals inside and outside their territory. The MOB Piru gang's primary rival was the Palm and Oaks Crips gang, which claimed the area that encompassed the Ace Liquor Store. The store was known as a "hang out" for Palm and Oaks Crip gang

---

5 MOB is an acronym for "money over bitches."

members. In response to a hypothetical question based on the facts of this case, Deputy Sanchez opined that the crimes were committed for the benefit of the MOB Piru gang.

3. Defense evidence

Defendant presented no evidence. Bennett's father, Maurice Bennett, Sr., (Bennett, Sr.) a minister and bishop of his church, testified on behalf of his son that Bennett's participation in gangs was the result of great peer pressure -- a "trap for his life." Bennett, Sr., had never seen any violent tendencies in his son, who was home-schooled due to the violence among the gangs at his high school. Bennett, Sr., described his son as a gift from God with an outstanding character, and he thought that shooting a rifle would be completely unlike him. Bennett, Sr., had taught Bennett right from wrong, but Bennett made bad choices.

DISCUSSION

Defendant contends that Bennett's confession was admitted into evidence in violation of the *Aranda-Bruton* rule. He argues that without its admission, the evidence would have been insufficient to establish that the shooting was planned, the victims were targeted, or the shooters intended to kill.

At the outset of trial, when defendant sought to exclude Bennett's confession, the prosecution had made some redactions which the trial court considered, along with defense counsel's suggestions, as suggested by the United States Supreme Court in *Richardson v. Marsh* (1987) 481 U.S. 200. There, the court held that "the Confrontation Clause is not violated by the admission of a nontestifying codefendant's confession with a proper limiting instruction when . . . the confession is redacted to eliminate not only the defendant's name, but any reference to his or her existence." (*Id*. at p. 211.) However, "'[r]edactions that simply replace a name with an obvious blank space or a word such as "deleted" or a symbol or other similarly obvious indications of alteration . . . leave statements that, considered as a class, so closely resemble *Bruton's* unredacted statements that . . . the law must require the same result.'" (*People v. Lewis* (2008) 43 Cal.4th 415, 455, italics omitted, quoting *Gray v. Maryland* (1998) 523 U.S. 185, 192.) Similarly, merely substituting "pronouns or similar neutral terms for the defendant's name will not

invariably be sufficient to avoid violation of the defendant's Sixth Amendment confrontation rights." (*People v. Fletcher* (1996) 13 Cal.4th 451, 468 (*Fletcher*).)

The trial court refused to exclude the statement but ordered additional redactions, including any reference to a Mustang, defendant's car, or the post office or defendant's occupation. The trial court stated that it would be willing revisit some items later. The changes made did not satisfy defendant's counsel, who argued that it would remain apparent that there was a fourth man involved in the shooting, giving rise to the obvious inference that defendant was the fourth man. Later in the trial, the prosecutor offered a further redacted version into evidence.[6]

Defendant argues that Bennett's interview made clear that there was another car of accomplices involved in the shooting. Defendant points to Bennett's statements: he was in the Camaro alone with Maxwell, when "the [redacted] car started shooting so damn, I just started shooting in the air"; "I just shot because they were shooting"; the driver was Lindsey; and Bennett had been "sitting like this with the gun in my lap and then . . . I heard [redacted] start shootin' . . . ." Defendant then suggests that redaction is always inadequate unless it eliminates any reference to the "'existence' of accomplices," as in *People v. Burney* (2009) 47 Cal.4th 203, 231-232 (*Burney*).

We reject defendant's suggestion. Whether specific editing satisfies the confrontation clause cannot be resolved by a '"bright line"' rule, but must be determined on a case-by-case basis in light of other evidence. (*Fletcher, supra*, 13 Cal.4th at p. 456.)

---

6 It is not clear that defendant has preserved this issue for review. Although the trial court indicated that it would revisit some items on request, defendant did not renew his objection to the further redacted interview at the time it was played for the jury. In general, when a motion in limine to exclude evidence is unsuccessful, the moving party should renew the objection when the evidence is actually offered at trial. (*People v. Jennings* (1988) 46 Cal.3d 963, 975.) Here, not only did defendant fail to renew his objections, but the additional redactions appear to have satisfied defense counsel, who agreed with the trial court that the interview had been "reviewed or redacted per [his] agreement and stipulation." We nevertheless discuss the issue, as forfeiture was not argued by respondent.

"The editing will be deemed insufficient to avoid a confrontation violation if, despite the editing, reasonable jurors could not avoid drawing the inference that the defendant was the coparticipant designated in the confession by symbol or neutral pronoun." (*Ibid*.)

In *Burney*, unlike here, the evidence established that there were just three accomplices; as all three were codefendants, the mention by two of them of a third accomplice referred directly to the appellant, despite redaction of his name. (*Burney, supra*, 47 Cal.4th at pp. 231-232.) Here, defendant was not the only person shown to have driven the Mustang, as Bennett was in the driver's seat when it was stopped by LAPD after the Gaucho Grill shooting. Also, defendant was one of 200 members of the MOB Piru gang, and the evidence suggested that different combinations of gang members were involved in the various MOB Piru shootings; even Bennett was not sure which of those who frequented Killen Court took part in the shooting or how many people were in the other car besides the driver, Lindsey. Nowhere in the redacted statements does Bennett say or suggest, as defendant argues, that there were no more than four accomplices.

Defendant also argues that the number of accomplices makes no difference to the analysis. His reliance on *Fletcher* and *People v. Jefferson* (2008) 158 Cal.App.4th 830, is misplaced as both authorities held that a substitution of neutral terms for a codefendant's name will be sufficient when there is a larger number of possible accomplices. (See *Fletcher, supra*, 13 Cal.4th at p. 466; *People v. Jefferson*, at p. 845.)

We are unable to conclude that Bennett's statements implied defendant's presence and complicity to the degree that a reasonable jury would find the inference unavoidable; it follows that the trial court's editing was sufficient. (See *Fletcher, supra*, 13 Cal.4th at p. 456.)

In any event, "[i]t is well established . . . that *Aranda*/*Bruton* error is not reversible per se, but rather is scrutinized under the harmless-beyond-a-reasonable-doubt standard of *Chapman v. California* (1967) 386 U.S. 18, 24. [Citation.] In determining whether improperly admitted evidence so prejudiced a defendant that reversal of the judgment of conviction is required, we have observed that 'if the properly admitted evidence is

overwhelming and the incriminating extrajudicial statement is merely cumulative of other direct evidence, the error will be deemed harmless.' [Citation.]" (*Burney*, *supra*, 47 Cal.4th at p. 232.) The summary that follows demonstrates that the properly admitted evidence of defendant's guilt was overwhelming. To the extent that Bennett's redacted statements imply that an occupant of defendant's car fired a weapon in the direction of the Ace Liquor Store, the summary further demonstrates that such statements were cumulative of direct evidence that the Mustang was involved and shots were fired from it.

Two witnesses saw a Mustang that appeared to be involved in the Ace Liquor Store shooting, and defendant admitted to Tyree that his car appears in the video recording of the shooting. One of the witnesses saw gunfire emanating from the Mustang. Defendant knew that his Mustang incriminated him and he was upset with Tyree for identifying his car in the video. Defendant told Tyree that he had to "get rid of his car because of what happened" and "because they had done something" which hurt an innocent person. Defendant also told Bennett that it would be costly to get rid of the "gray thing," and he asked Keith whether he knew someone who could "get rid of that mother fucker."

Moreover, in addition to the use of defendant's car in the Ace Liquor Store shooting, gang evidence incriminated defendant. As an active member of the MOB Piru criminal street gang, defendant was expected to "put in work" for the gang by committing violent crimes. The MOB Piru defended its territory and discouraged witnesses by shooting rival gang members inside and outside MOB Piru territory. MOB Piru's primary rival was the Palm and Oaks Crips and the Ace Liquor Store was a known "hang out" for Palm and Oaks members. Defendant apparently also put in work during the Gaucho Grill shooting, as he was detained after leaving the scene in his Mustang with fellow MOB Piru gang member, Bennett, just after shots were fired from the vehicle occupied by MOB Piru gang members, Phillipus and Haley.

Ballistics evidence also incriminated defendant. The handgun recovered from defendant's car after the Gaucho Grill shooting was the same weapon that was used to kill Herrera. The shell casings recovered from the area of the Gaucho Grill, as well as

those recovered from the Earnest Grayson shooting had been fired from the murder weapon. The M-1 carbine rifle defendant sold to Moran had fired seven of the .30-caliber cartridge cases found at the scene of the Ace Liquor Store shooting.

We have concluded that the trial court's redactions were sufficient; we also conclude from the foregoing evidence that the admission of Bennett's statement was harmless beyond a reasonable doubt. (See *Burney*, *supra*, 47 Cal.4th at p. 232.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD