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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ELBERT HASKINS,

Defendant and Appellant.

2d Crim. No. B234266
(Super. Ct. No. NA087116)
(Los Angeles County)

Elbert L. Haskins appeals from the judgment entered following his conviction, by a jury, of the first degree murder of John Evans and the attempted murder of Joshua Moore. (Pen. Code, §§ 187, subd. (a), 664.) The jury found true allegations that appellant had personally and intentionally discharged a firearm causing great bodily injury or death. (*Id.*, § 12022.53, subd. (d).) Appellant pleaded no contest to possession of a firearm by a convicted felon. (*Id.*, § 12021, subd. (a)(1).) He was sentenced to prison for 50 years to life.

Appellant contends that the evidence is insufficient to support his conviction for the attempted murder of Joshua Moore. We affirm.

Facts

Appellant and John Evans got into an argument during a party at an apartment. Appellant stormed out of the apartment. Appellant later reentered the apartment and continued to argue with Evans. Joshua Moore, who was inside the apartment with Evans, testified that appellant "walked outside" and "a couple of seconds later he came back in and he started shooting towards [Evans] and myself."

At the time of the shooting, Evans was seated on a chair in front of appellant. Moore was seated on a sofa "right behind" Evans and was facing appellant. The distance between Evans and Moore was approximately two feet. Moore heard four or five gunshots. He was shot once in the chest. After the shooting, appellant ran outside.

Evans died as a result of multiple gunshot wounds. During an autopsy, bullets were removed from his brain and neck. The police recovered the firearm that had been used in the shootings. The firearm contained four fired cartridge casings.

Appellant admitted that he was at the party but denied having committed the offense.

Prosecutor's Closing Argument

During closing argument, the prosecutor declared that appellant had "walked in and shot [Evans] in the head four times." The prosecutor continued: "[T]wo bullets lodged in [Evans's body]. One bullet ricocheted off and one passed through and through. [The bullet] that passed through and through, landed in the chest of [Joshua Moore]" "Obviously, [appellant's] intent is to kill John Evans. But he created a zone, a kill zone of everyone who is on the other side of that gun. And directly on the other side of that muzzle was Joshua Moore."

Standard of Review

"When considering a challenge to the sufficiency of the evidence to support a conviction, we 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.' [Citation.] . . . [A] reviewing court 'presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.' [Citation.]" (*People v. Avila* (2009) 46 Cal.4th 680, 701.)

Discussion

To uphold the conviction for the attempted murder of Joshua Moore, it is not enough to show that appellant intended to kill John Evans. It must be shown that he intended to kill Moore. " 'To be guilty of attempted murder, the defendant must intend to kill the alleged victim, not someone else.' [Citation.]" (*People v. Smith* (2005) 37 Cal.4th 733, 740.) "Someone who in truth does not intend to kill a person is not guilty of that person's attempted murder even if the crime would have been murder - due to transferred intent - if the person were killed." (*People v. Bland* (2002) 28 Cal.4th 313, 328.)

Appellant contends that the evidence is insufficient to support a finding that he harbored a specific intent to kill Moore. Based on *People v. Smith, supra*, 37 Cal.4th 733, the evidence is sufficient. In *Smith* the mother of a three-month-old baby was seated in the driver's seat of a vehicle. The mother's baby was seated in the backseat directly behind her. The defendant, who claimed that the mother was his ex-girlfriend, approached the vehicle and saw the baby in the backseat directly behind the mother. The defendant "fired a single shot into the vehicle from a position directly behind it and a distance of approximately one car length as [mother] was pulling away from the curb." (*Id.*, at p. 742.) The bullet "missed both the baby and the mother by a matter of inches as it shattered the rear windshield, passed through the mother's headrest, and lodged in the driver's side door." (*Id.*, at p. 743.) The defendant was convicted of the attempted murder of both the mother and the baby. Our Supreme Court rejected the defendant's contention that his intent was to kill only the mother and that the evidence was therefore insufficient to support his conviction for the attempted murder of the

baby. The court reasoned: "[E]vidence that defendant purposefully discharged a lethal firearm at the victims, both of whom were seated in the vehicle, one behind the other, with each directly in his line of fire, can support an inference that he acted with intent to kill both. [Citations.]" (*Id.*, at p. 743.)

Just as in *Smith* the baby was seated directly behind the mother, here Moore was seated directly behind Evans. The evidence, therefore, supports a reasonable inference that appellant "purposefully discharged a lethal firearm at the victims both of whom were seated . . . one behind the other, with each directly in his line of fire" (*People v. Smith, supra*, 37 Cal.4th at p. 743.) Accordingly, a reasonable trier of fact could find beyond a reasonable doubt that appellant intended to kill Moore as well as Evans. In *Smith* our Supreme Court noted: "[E]ven if defendant subjectively believed he had a particular reason or cause to shoot at the mother, that does not preclude a finding that he also harbored express malice toward the baby when he fired in the vehicle with both victims directly in his line of fire." (*Id.*, at p. 738.)

Moreover, the evidence is sufficient to support appellant's attempted murder conviction based on the "kill zone" theory argued by the prosecutor. Our Supreme Court explained the "kill zone" theory in *People v. Bland, supra*, 28 Cal.4th at page 330: "[C]onsider a defendant who intends to kill A and, in order to ensure A's death, drives by a group consisting of A, B, and C, and attacks the group with automatic weapon fire or an explosive device devastating enough to kill everyone in the group. The defendant has intentionally created a 'kill zone' to ensure the death of his primary victim, and the trier of fact may reasonably infer from the method employed an intent to kill others concurrent with the intent to kill the primary victim. When the defendant escalated his mode of attack from a single bullet aimed at A's head to a hail of bullets or an explosive device, the factfinder can infer that, whether or not the defendant succeeded in killing A, the defendant concurrently intended to kill everyone in A's immediate vicinity to ensure A's death."

Here, appellant did not fire a single bullet at Evans's head. Instead, he fired four bullets. "Even if the jury found that [appellant] primarily wanted to kill [Evans] rather than [Moore], it could reasonably also have found a *concurrent* intent to kill [Moore] when [appellant] . . . fired a flurry of bullets at [Evans] and thereby created a kill zone. Such a finding fully supports the attempted murder conviction[] as to [Moore]." (*People v. Bland, supra*, 28 Cal.4th at pp. 330-331.)

Disposition

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Arthur H. Jean, Jr., Judge
Superior Court County of Los Angeles

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