Filed 10/11/12 P. v. Cordova CA2/8

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>BRANDON X. CORDOVA et al.,<br><br>Defendants and Appellants. | B235226<br><br>(Los Angeles County<br>Super. Ct. No. KA093655) |

APPEAL from judgments of the Superior Court of Los Angeles County. Bruce F. Marrs, Judge. As to Brandon X. Cordova, affirmed in part, reversed in part and remanded for resentencing. As to Carmello A. Placeres, affirmed.

Ava R. Stralla, under appointment by the Court of Appeal, for Defendant and Appellant Brandon X. Cordova.

Christopher Love, under appointment by the Court of Appeal, for Defendant and Appellant Carmello A. Placeres.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews and Herbert S. Tetef, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted defendant and appellant Brandon X. Cordova of two counts of assault with a firearm and two counts of making criminal threats, and found true the personal use of a firearm enhancement as to all four counts. The jury acquitted defendant and appellant Carmello A. Placeres of the assault counts, but found him guilty on a separate charge of being a felon in possession of a firearm, and also found true the special allegation that defendant Placeres had suffered a prior felony conviction. Both defendants were sentenced to determinate terms in state prison, and both timely appealed.

Defendant Cordova contends the trial court abused its discretion in admitting gang evidence, and committed sentencing error in violation of Penal Code section 654. Appointed counsel for defendant Placeres filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) in which no issues were raised. However, counsel requested we review sealed, confidential records for a possible violation of *Brady v. Maryland* (1963) 373 U.S. 83 (*Brady*).

Respondent concedes there was sentencing error as to defendant Cordova. We agree and remand for resentencing as to defendant Cordova, but otherwise affirm his conviction. We affirm as to defendant Placeres, finding no colorable issues under *Wende*, including no *Brady* error.

## FACTUAL AND PROCEDURAL BACKGROUND

By amended information filed May 5, 2011, defendant Cordova was charged with two counts of assault with a firearm in violation of Penal Code section 245, subdivision (a)(2) (counts 1 and 2), and two counts of making criminal threats in violation of Penal Code section 422 (counts 3 and 4). It was also specially alleged, as to all four counts, that defendant Cordova personally used a firearm in the commission of the offenses within the meaning of Penal Code section 12022.5, subdivision (a). Defendant Placeres was jointly charged with defendant Cordova in counts 1 and 2, and was also separately charged with being a felon in possession of a firearm under former

Penal Code section 12021, subdivision (a)(1)[1] (count 5). It was specially alleged that defendant Placeres had suffered a prior felony conviction within the meaning of Penal Code section 667.5, subdivision (b). Both defendants entered pleas of not guilty to all charges.

The felony charges arose from an incident that occurred on March 14, 2011, when the defendants confronted the two victims, 15-year-old twin brothers Lorenzo I. and Lyle I.,[2] who were walking home from school. Defendants drove up in a black Honda. Defendant Placeres was driving and defendant Cordova was in the front passenger seat. Defendant Cordova made repeated verbal threats to the brothers, including threatening to shoot them while pointing a gun directly at them. After defendants drove off, the brothers ran home and called 911. Later that same day, officers from the Baldwin Park Police Department located and arrested defendant Cordova near defendant Placeres's residence, and also found defendant Placeres inside his garage with another male, and several females. Defendant Placeres was placed under arrest. A black Honda was located on the property and a gun was found inside the garage.

At the start of the jury trial, counsel for defendants each made various motions to exclude evidence. In particular, defendant Cordova moved to exclude all gang evidence as irrelevant and unduly prejudicial because of the lack of any gang enhancement allegations. The court denied the motion, stating the prosecution was required to establish "sustained fear" as an element of the criminal threat charges and that the gang references therefore appeared admissible. However, the court invited defense counsel to renew the motion depending on what evidence ultimately was offered.

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[1] Former Penal Code section 12021 was repealed effective January 1, 2012, and reenacted without substantive change as section 29800. (Stats. 2010, ch. 711, § 6.)

[2] We refer to the minor victims by their first names to protect their privacy, and suggest no disrespect by the informality.

Defendant Placeres requested the prosecution be ordered to produce a booking photo and "rap sheet" for Jaime Hurtado, the other male detained in Placeres's garage on the day Placeres was arrested. The prosecution opposed, arguing there was no evidence linking Mr. Hurtado to the assaults and threats on the brothers. The court denied the motion, explaining that "[b]ooking photos and rap sheets of non-appearing non-witnesses would not appear to be of a nature of evidence that would help the jury resolve any of the issues in our case. I'm not going to order it on the record I have before me."

Lorenzo was the first witness to testify. Lorenzo testified that, on March 14, 2011, he was walking home from school with his twin brother, Lyle, in the city of Baldwin Park. As they approached an intersection, a black Honda pulled up to them. He remembered the car had four doors and the back windows were tinted. Defendant Cordova, whom the brothers knew from a neighborhood boxing gym, got out of the Honda, walked up to them, and said, "How you doin'?" or "What's up?" Cordova also said "East Side," which Lorenzo understood to mean the East Side gang in Baldwin Park. Defendant Cordova then claimed the boys' father had pointed a gun at Cordova's cousins. Cordova said he was going to kill the brothers because of what their father allegedly had done. Defendant Cordova then got back in the passenger side of the Honda. Lorenzo and his brother started to walk away.

Instead of driving away, the Honda drove up alongside Lorenzo and Lyle. Lorenzo heard defendant Cordova ask the driver for a gun. The driver reached down near the pedals and handed something to defendant Cordova. Lorenzo heard the driver tell Cordova to not stick the gun out the window, so Cordova rested the gun on the door frame, pointing it directly at the brothers. The gun appeared to be a chrome revolver that looked like "a cowboy pistol" or pistol used in movie westerns. Defendant Cordova again threatened to shoot the brothers, and Lorenzo pled with him not to shoot. As the Honda drove off, defendant Cordova once again yelled "East Side" to Lorenzo and his brother. Lorenzo and Lyle ran home, told their father what happened and called 911.

Lorenzo testified he believed defendant Cordova's threats were real, he was scared, and he took the gang reference as a specific threat. Lorenzo was scared to testify. During his testimony, the 911 call was played for the jury and Lorenzo identified his voice from the audiotape. He also identified the gun recovered from defendant Placeres's garage as looking like the gun pointed at them by defendant Cordova, and confirmed the pretrial identifications he made of both defendants from six-pack photographic cards shortly after the incident.

Lyle's testimony regarding the incident was substantially consistent with his brother's testimony. Lyle recalled that when defendants initially pulled up next to them in the car, defendant Cordova flashed his "gang sign" in addition to claiming "East Side." Lyle demonstrated the gang sign by holding his right hand out horizontally, with the three middle fingers extended. Lyle identified defendant Cordova in court and said he looked the same way on March 14, 2011, except that his hair was grown out, because he used to be "like bald."

Lyle testified that defendant Cordova claimed their father had shot at Cordova's cousins and that Cordova was therefore going to shoot them. Lyle tried to explain their father had only confronted the cousins for shooting pellet guns at Lyle and Lorenzo's younger brothers. Defendant Cordova then returned to the Honda. Lyle thought he was leaving, so he and Lorenzo started back down the sidewalk. However, defendants then pulled up alongside the brothers again. Lyle saw the driver hand something to defendant Cordova, who was in the front passenger seat. Cordova pulled a little rag off of a silver or chrome-colored gun and pointed it out the window at him and his brother. Defendant Cordova threatened to kill them. He was only about five feet away from the brothers when he did so.

Lyle identified the gun recovered from defendant Placeres's garage as looking like the gun defendant Cordova used to threatened them, but said he thought it seemed a little smaller than he remembered. Like Lorenzo, Lyle also confirmed his pretrial identifications of both defendants from six-pack photographic cards.

Lyle testified he knew East Side or East Side Bolen to be a Baldwin Park gang, as he had lived in Baldwin Park most of his life. He was scared when defendant Cordova claimed his gang and threatened him and Lorenzo, because he understood Cordova to be a gang member, took his threats seriously, and was afraid that he or other gang members would come to their house. After the incident, Lyle received a call on his cell phone from defendant Cordova, who was cussing and called Lyle a "little bitch." Lyle was scared to testify because of the threats, and said his family planned to move away from Baldwin Park.

Officer Jessica Serrano of the Baldwin Park Police Department responded to the boys' 911 call and went to their home to interview them. Officer Serrano testified that both brothers appeared frightened when she arrived. Both Lorenzo and Lyle told Officer Serrano that defendant Cordova had claimed his East Side gang during the incident. She also explained that Lyle reported to her later on that he had received a phone call from defendant Cordova in which he said: "[Y]ou better be on the run, I'm gonna shoot you, this is East Side Bolen."

Corinna Sanchez, defendant Cordova's former girlfriend, also testified. She explained that in the late afternoon of March 14, 2011, she went with Cordova, her sisters and a friend to defendant Placeres's residence because her friend wanted to get a tattoo. Ms. Sanchez stated she saw a gun in the garage that afternoon, and that she let defendant Cordova borrow her cell phone to make a phone call. Cell phone records, introduced through Verizon Wireless employee Jody Citizen, showed that phone calls were made from Ms. Sanchez's cell phone number to Lyle's cell phone number on that date.

Officer Adam Acuna, also of the Baldwin Park Police Department, went to defendant Placeres's residence on March 14, 2011, after he received a dispatch call to perform a "location check for suspects." He, along with several other officers, located defendant Placeres, as well as Jaime Hurtado and several females inside the garage at the residence. In Officer Acuna's search of the garage, he found a chrome revolver with

a black pistol grip. He also discovered a black Honda on the property, which had a wristband inside bearing defendant Placeres's name.

Officer James Gallegos was familiar with defendant Cordova from previous encounters, and while en route to defendant Placeres's residence in response to the dispatch call, he saw defendant Cordova on the street. Officer Gallegos testified he saw Cordova shaking hands with another male, later identified as defendant Placeres. Officer Gallegos pulled his patrol car over and detained defendant Cordova on the street.

Defendant Cordova testified in his own defense. He admitted he confronted Lorenzo and Lyle on March 14, 2011. Defendant Cordova said a friend, whom he would not name or whose name he could not remember, had picked him up that morning in a four-door, black Honda with tinted windows. They were driving to the store when he saw Lorenzo and Lyle walking along the sidewalk. He told the driver to pull over. Defendant Cordova testified he got out of the car, went up to the brothers on foot, said "what's up" and then proceeded to ask why their father had pointed a gun at his cousins. When they denied their father had done so, he said he did not like them trying to "bullshit" him, so he returned to the Honda to get the gun in the car, which was a chrome revolver. Defendant Cordova admitted he then pointed the gun directly at both brothers from inside the car, and repeatedly told them he was going to shoot them. He said it was a "scare tactic" and that "I was just trying to scare them."

Defendant Cordova also admitted he called Lyle later on and that he had done so because he was upset the brothers had called the police. He said he knew defendant Placeres was a gang member, but denied knowing if he was a member of East Side Bolen, despite the fact defendant Placeres had a tattoo across his forehead that said "BOLEN." Defendant Cordova also denied he was a member of the East Side Bolen gang or one of the gang's cliques known as the Midget Charros, and denied ever saying "East Side" to Lorenzo and Lyle when he confronted them. Defendant Cordova admitted having several tattoos, including "ESBP" (short for East Side Bolen Parque)

on his chest, three stars behind his ear, and the initials "M" and "CS" on his feet, which stood for "Midget Charros."

The prosecution offered several rebuttal witnesses, including Moises Garcia, Officer Andrew Witty, and Detective Esteban Mendez. Mr. Garcia, a security officer for the Baldwin Park School District, attested to a previous encounter with defendant Cordova in which he flashed an East Side Bolen gang sign and was wearing clothing referencing the East Side Midget Charros. Officer Witty of the Baldwin Park Police Department testified to his contacts with defendant Cordova, just a couple of months before the incident with Lorenzo and Lyle, in which defendant Cordova flashed the East Side gang sign and admitted his membership in the East Side Bolen gang.

Detective Mendez, a gang detective for the Baldwin Park Police Department, testified as a gang expert. Before he was allowed to testify, the trial court allowed additional argument as to the admissibility of his testimony, and specifically limited the scope of the testimony to exclude various issues, including a field identification card documenting a police encounter with defendant Placeres.

Detective Mendez explained that East Side Bolen Parque or East Side Baldwin Park is a documented criminal street gang in the City of Baldwin Park, and Midget Charros is one of the gang's known cliques. He described the gang's hand sign, with the middle three fingers forming a capital letter "E." Detective Mendez confirmed that the East Side gang regularly makes criminal threats, and commits violent crimes, and stated his opinion that both defendants were active members. He explained that negative conduct directed against a relative or family member of a gang member will be perceived as a slight to the gang, and that gang culture ordinarily requires a retaliatory response in order to maintain intimidation and fear in the community, as well as "respect." Detective Mendez also explained that gang members generally worked together and a gang member would ordinarily bring along another gang member in carrying out acts of retaliation and other crimes.

Following deliberations, the jury returned a verdict finding defendant Cordova guilty on counts 1 through 4, and finding true the personal use of a fireman allegation as

to all four counts. The jury found defendant Placeres not guilty of the assault charges, but did find him guilty on count 5, felon in possession of a firearm. The jury also found true the special allegation that defendant Placeres had suffered a prior felony conviction.

The court imposed sentences in state prison of 18 years and four years on defendants Cordova and Placeres, respectively. Defendant Cordova's sentence consisted of the upper term of four years on count 1, identified as the base count, plus the upper term of 10 years on the firearm enhancement. A seven-year sentence on count 2 was stayed pursuant to Penal Code section 654. And, consecutive two-year terms, consisting of one-third the middle term on the substantive offense of making a criminal threat, and one-third the middle term for the firearm enhancement, were imposed on counts 3 and 4. Defendant Placeres's sentence of four years was calculated as follows: the upper term of three years on the substantive offense, plus one year for the prior conviction. Both defendants were awarded custody credits and were ordered to pay various fines.

Both defendants timely appealed.

## DISCUSSION

### 1. Defendant Brandon X. Cordova

Defendant Cordova raises two issues on appeal. He contends the trial court abused its discretion in allowing the prosecution to present gang evidence which was irrelevant, cumulative and highly prejudicial. Defendant also argues the court committed sentencing error under Penal Code section 654. We find no evidentiary error, but conclude there was sentencing error under section 654 and reverse for resentencing.

#### a. The admission of gang evidence

Defendant argues there was no evidence of a gang-related motive for the charged crimes and no gang enhancement was alleged. Defendant therefore contends the evidence of gang membership, gang tattoos, and gang culture elicited from percipient witnesses as well as a gang expert, was irrelevant to any material issue, was more prejudicial than probative, and should have been excluded. We disagree.

The principles governing admissibility of gang evidence are settled. "Gang evidence is admissible if it is logically relevant to some material issue in the case other than character evidence, is not more prejudicial than probative, and is not cumulative." (*People v. Avitia* (2005) 127 Cal.App.4th 185, 192 (*Avitia*).) Gang evidence is inadmissible "if introduced only to 'show a defendant's criminal disposition or bad character as a means of creating an inference the defendant committed the charged offense. [Citations.]' [Citations.]" (*Ibid.*) In cases not involving a gang enhancement allegation, evidence of a defendant's gang membership is potentially prejudicial and should be excluded where its probative value is minimal. (*People v. Hernandez* (2004) 33 Cal.4th 1040, 1049.)

However, gang membership may be properly admitted where relevant to the charged offense, even in the absence of a gang enhancement. (*People v. Hernandez, supra*, 33 Cal.4th at p. 1049.) "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*." (*Ibid*., italics added.) The trial court's admission of gang evidence is reviewed for abuse of discretion, and its ruling "will not be disturbed in the absence of a showing it exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a miscarriage of justice." (*Avitia, supra*, 127 Cal.App.4th at p. 193.)

The gang evidence admitted below was logically relevant to a material issue—the element of the victims' fear in counts 3 and 4—and was neither cumulative nor more prejudicial than probative. (*Avitia, supra*, 127 Cal.App.4th at p. 192; see also *People v. Mendoza* (2000) 24 Cal.4th 130, 178-179 [gang evidence relevant to establish element of fear in robbery count and not unduly prejudicial].)

In order to prove the criminal threats charges in counts 3 and 4, the prosecution was required to establish that defendant Cordova's threats to Lorenzo and Lyle reasonably caused them to be "in sustained fear for [their] own safety or for [their]

immediate family's safety." (Pen. Code, § 422, subd. (a).) Both victims testified defendant Cordova claimed his Baldwin Park gang by saying "East Side" when initially confronting them, and also when leaving the scene. Lyle also testified that Cordova flashed a gang symbol with his right hand, fingers extended out, basically in the shape of an "E". Both brothers said they knew defendant Cordova was a gang member, took his threats seriously, feared for their safety, and also expressed fear about testifying. Lyle testified that their family was trying to move away from Baldwin Park as a result of the incident.

We cannot agree with defendant's characterization of this evidence as only "marginally probative" given the prosecution's burden on counts 3 and 4, and the direct relevance of establishing the reasonableness of the boys' fears because of the fact the threats had been made by a gang member. The gang evidence was significant to the prosecution's case as it bolstered the boys' testimony regarding their stated fears.

Moreover, the additional gang evidence presented by the prosecution in rebuttal was also properly admitted. Defendant Cordova denied being a gang member. The testimony of Mr. Garcia and Officer Witty was properly introduced as impeachment of defendant Cordova. Detective Mendez's testimony about the common hand signs of East Side with the fingers shaped like the letter "E," and generally about gang culture corroborated Lorenzo and Lyle's testimony. Detective Mendez's testimony that gang members generally are motivated to commit crimes of intimidation and retaliation against any individual for perceived slights to members of the gang or to relatives of members, in order to not appear weak and to garner "respect" in the community through fear, was probative of motive. (*People v. Samaniego* (2009) 172 Cal.App.4th 1148, 1168 [because " ' "motive is ordinarily the incentive for criminal behavior, its probative value generally exceeds its prejudicial effect, and wide latitude is permitted in admitting evidence of its existence" ' "].)

In short, the trial court did not exercise its discretion in an "arbitrary, capricious, or patently absurd manner that resulted in a miscarriage of justice." (*Avitia*, *supra*, 127 Cal.App.4th at p. 193.) Indeed, the record shows the court allowed extensive argument

at various stages of the trial on the issue of admissibility of the evidence, and was thorough in its efforts to tailor its rulings, including limiting the scope of Detective Mendez's testimony (e.g., excluding the field identification card and related testimony concerning a prior incident with defendant Placeres). And, assuming any error could be found, it would be harmless. The prejudicial effect of any evidentiary error is measured under the standard set forth in *People v. Watson* (1956) 46 Cal.2d 818 (*Watson*). The erroneous admission of evidence under state law "results in a due process violation only if it makes the trial fundamentally unfair. [Citations.] Absent fundamental unfairness, state law error in admitting evidence is subject to the traditional *Watson* test: The reviewing court must ask whether it is reasonably probable the verdict would have been more favorable to the defendant absent the error." (*People v. Partida* (2005) 37 Cal.4th 428, 439, italics omitted.) We reject defendant's assertion that *Chapman v. California* (1967) 386 U.S. 18 applies as defendant has failed to show the admission of the gang evidence was so prejudicial as to give rise to a due process violation.

Defendant admitted to having pointed the gun directly at the brothers while threatening to shoot both of them, he admitted threatening Lyle again by phone, and admitted he had the specific intent to scare and intimate the brothers. There was solid evidence by both victims as to the fear they experienced because of defendants' conduct. Moreover, the fact the jury acquitted defendant Placeres on counts 1 and 2 indicates they likely were not prejudicially inflamed by the admission of the gang evidence. (See, e.g., *People v. Garcia* (2008) 168 Cal.App.4th 261, 278 [acquittal of codefendant "strongly indicates" gang evidence was not unduly prejudicial and that jury thoughtfully considered the evidence and court's instructions].) Defendant Cordova has failed to show he would have obtained a more favorable verdict in the absence of the gang evidence.

**b. Penal Code section 654**

In sentencing defendant Cordova, the trial court imposed 14 years on count 1 (assault with a firearm against Lorenzo), consisting of the upper term of four years for the assault (Pen. Code, § 245, subd. (a)(2)), and the upper term of 10 years on the

firearm enhancement (*id*., § 12022.5, subd. (a)). The court then imposed seven years on count 2 (assault with a firearm against Lyle), but stayed sentence pursuant to Penal Code section 654. On each of counts 3 and 4 (the criminal threats against each brother), the court imposed two-year consecutive terms, consisting of one-third the middle term on the offense, and one-third the middle term on the firearm enhancement (*id*., §§ 422, 12022.5, subd. (a)). Defendant Cordova's aggregate state prison sentence was 18 years, with custody credits of 179 days.

Respondent concedes sentencing error pursuant to Penal Code section 654, arguing that sentence should have been stayed on counts 3 and 4, but not stayed as to count 2. After initially arguing the sentence should have been stayed on both counts 1 and 2, defendant Cordova agrees, in his reply brief, that respondent's position is correct. We also agree.

In relevant part, Penal Code section 654 provides: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." (*Id.*, § 654, subd. (a).) "[I]t is well settled that '[s]ection 654 bars multiple punishments for separate offenses arising out of a single occurrence where all of the offenses were incident to one objective.' [Citation.]" (*People v. Rodriguez* (2009) 47 Cal.4th 501, 507.)

In finding defendant Cordova guilty of making criminal threats in counts 3 and 4, the jury also found true that he used a firearm in the commission of those offenses. Therefore, the verdict on the criminal threats counts, of necessity, can only be based on the threats made by Cordova from the car *while holding the gun*, and *not* on the alternative bases of the initial threats on the sidewalk to both brothers or the later threats made by cell phone to Lyle, neither of which involved direct use of a gun.

Defendant Cordova's threats from the car while pointing the gun at both victims was the same conduct on which the assault with a firearm charges in counts 1 and 2 were based, and on which the jury necessarily found defendant Cordova guilty. " 'The proscription against double punishment in [Penal Code] section 654 is applicable where

there is a course of conduct which . . . comprises an indivisible transaction punishable under more than one statute . . . . The divisibility of a course of conduct depends upon the intent and objective of the actor, and if all the offenses are incident to one objective, the defendant may be punished for any one of them but not for more than one.' [Citation.] '. . . [[T]o permit multiple punishments,] there must be evidence to support a finding the defendant formed a separate intent and objective for each offense for which he was sentenced. [Citation.]' [Citation.]" (*People v. Coleman* (1989) 48 Cal.3d 112, 162.)

There is no evidence defendant Cordova had separate intents or objectives in making the threats when he was seated in the car pointing the gun directly at both brothers. As defendant Cordova admitted in his own testimony, his intent was to scare and intimidate the brothers by such conduct. Accordingly, Penal Code section 654 mandates that defendant Cordova be punished under Penal Code section 245, subdivision (a)(2), the statute with a longer potential term of imprisonment than Penal Code section 422. And, the sentence on counts 3 and 4 must therefore be stayed.

In contrast, the sentence on count 2 should not have been stayed. Penal Code section 654 has long been interpreted as *not* barring multiple punishments for a single act of violence against multiple victims, often referred to as the multiple-victim exception. (*People v. Hall* (2000) 83 Cal.App.4th 1084, 1086 (*Hall*); see also *People v. Brannon* (1924) 70 Cal.App. 225, 235-236.) " 'A defendant who commits an act of violence with the intent to harm more than one person or by a means likely to cause harm to several persons is more culpable than a defendant who harms only one person. . . . Section 654 is not ". . . applicable where . . . one act has two results each of which is an act of violence against the person of a separate individual." ' " (*Hall*, *supra*, 83 Cal.App.4th at p. 1088-1089, quoting *Neal v. State of California* (1960) 55 Cal.2d 11, 20-21.)

In counts 1 and 2, the jury found defendant Cordova guilty of committing an assault with a firearm against Lorenzo and an assault with a firearm against Lyle, respectively. The testimony from the victims was that defendant Cordova threatened

*both* of them, pointing the gun at *each* brother, stating he would shoot them and that he would kill them. Each brother testified to being scared and fearful that defendant Cordova was serious and would carry out his threats. Defendant Cordova's conduct resulting in an act of violence against two separate victims is properly punished as two separate assaults with a firearm under the multiple-victim exception to Penal Code section 654. (See, e.g., *People v. Prater* (1977) 71 Cal.App.3d 695, 699 [defendant properly sentenced on two counts of assault with a deadly weapon for firing one bullet at the intended victim which passed through that victim and hit and injured a second victim seated nearby].)

We therefore reverse in part for resentencing. On remand, the trial court shall stay imposition of sentence on counts 3 and 4 pursuant to Penal Code section 654, and shall exercise its discretion to reconsider the sentence imposed against defendant Cordova on count 2, keeping in mind that a section 654 stay is inappropriate on count 2.

**2. Defendant Carmello A. Placeres**

Appointed counsel for defendant Placeres filed a *Wende* brief in which no issues were raised, with the exception of noting the possibility of *Brady* error and requesting this court to review the sealed materials in the record. The brief also included a declaration from counsel that he reviewed the record and sent a letter to defendant explaining his evaluation of the record. Counsel further declared he advised defendant of his right, under *Wende*, to submit a supplemental brief within 30 days. Defendant did not file any supplemental brief with this court.

Based on our independent review of the record, we conclude there is substantial evidence in the record to support defendant's conviction under former Penal Code section 12021, subdivision (a)(1). (*People v. Bolin* (1998) 18 Cal.4th 297, 331; *People v. Scott* (1978) 21 Cal.3d 284, 296.) No errors are apparent in the record, including with respect to the court's denial of defendant's request for discovery regarding Jaime Hurtado. Both victims identified defendant Placeres from six-pack photographic cards as the driver with defendant Cordova. Mr. Hurtado was not similar in appearance to defendant Placeres or to the description given by Lorenzo and Lyle of the driver who

handed the gun to defendant Cordova. There was no direct or circumstantial evidence linking Mr. Hurtado to the gun used in the crimes and found in defendant Placeres's garage, other than that he happened to be in the garage when the police arrived. (See generally *People v. Hall* (1986) 41 Cal.3d 826, 833.)

We find no error in the court's discovery order, and a review of the sealed, confidential transcripts reveals no *Brady* error. The *Brady* hearings placed on the record on June 29 and June 30, 2011, had nothing to do with Mr. Hurtado. "Evidence is material under *Brady* if there is a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed. [Citations.] 'A "reasonable probability" of a different result is accordingly shown when the government's evidentiary suppression "undermines confidence in the outcome of the trial." [Citation.]' [Citations.] . . . *Brady*, however, does not require the disclosure of information that is of mere speculative value. '[T]he prosecution has no general duty to seek out, obtain, and disclose all evidence that might be beneficial to the defense.' [Citations.] *Brady* did not create a general constitutional right to discovery in a criminal case." (*People v. Gutierrez* (2003) 112 Cal.App.4th 1463, 1472.) The record does not show any *Brady* error.

We have examined the entire record and are satisfied that appointed counsel fully complied with his responsibilities. We conclude there no arguable appellate issues. (*People v. Kelly* (2006) 40 Cal.4th 106; *Wende, supra* 25 Cal.3d 436.) We therefore affirm the judgment below.

**DISPOSITION**

The judgment as to Brandon X. Cordova is reversed in part as to the sentence imposed and remanded for resentencing. On remand, the court shall stay imposition of sentence on counts 3 and 4 (criminal threats with firearm enhancement; Pen. Code, §§ 422, 12022.5, subd. (a)). The court shall exercise its discretion to reconsider its sentence on count 2, keeping in mind that a stay on count 2 pursuant to Penal Code section 654 is inappropriate. Following resentencing, the trial court is directed to prepare and transmit a modified abstract of judgment to the Department of Corrections

and Rehabilitation. In all other respects, the judgment as to Brandon X. Cordova is affirmed.

The judgment as to Carmello A. Placeres is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.