Filed 11/30/18 P. v. Blade CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>BOSTON BLADE et al.,<br><br>Defendants and Appellants. | B280956<br><br>(Los Angeles County Super. Ct. No. NA095707) |

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard R. Romero, Judge. Affirmed in part, remanded in part with directions.

Boyce & Schaefer, Robert E. Boyce under appointment by the Court of Appeal, for Defendant and Appellant Boston Blade.

Valerie G. Wass under appointment by the Court of Appeal, for Defendant and Appellant Marquis Demondre Wilson.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb, Stacy S. Schwartz and

Michael Katz, Deputy Attorneys General, for Plaintiff and Respondent.

## INTRODUCTION

A jury convicted defendants Boston Blade of second-degree murder and Marquis Wilson of first-degree murder, stemming from the shooting of a rival gang member. The jury also convicted both defendants of committing an armed robbery of a liquor store two days later. On appeal, both defendants challenge the sufficiency of the evidence supporting their murder convictions. We find sufficient evidence to support Marquis's[1] conviction for first-degree murder. On the other hand, we conclude there was insufficient evidence to sustain the verdict on the murder count as to Boston. We therefore reverse Boston's murder conviction.

We reject Marquis's claim that the trial court erred in denying his motion to sever the robbery counts from the murder count. We therefore affirm his conviction. However, we agree with the parties that remand is appropriate to allow the court to exercise its discretion as to the remaining sentencing enhancements under Penal Code section 12022.53.[2] We also remand this matter to the trial court for the purpose of determining whether Marquis was afforded sufficient opportunity to present relevant information for his eventual youth offender parole hearing, consistent with *People v. Franklin* (2016) 63 Cal.4th 261 (*Franklin*). We also order the trial court to prepare

[1] We refer to members of the Blade family and members of the Wilson family by first name to avoid confusion.

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

corrected minute orders and abstracts of judgment accurately reflecting the court's orders imposing and staying the various sentence enhancements. In all other respects, we affirm the judgment.

## FACTUAL AND PROCEDURAL HISTORY

### I. *Procedural Background*

The Los Angeles County District Attorney (the People) filed an information on August 15, 2014 charging Boston, Marquis, and Nicholas Rackley[3] with two counts of second-degree robbery committed on May 5, 2013 (Pen. Code, § 211; counts one and two), and one count of murder committed on May 3, 2013 (§ 187, subdivision (a); count three). As to all three counts, the information alleged that the offenses were committed for the benefit of, at the direction of, and in association with a criminal street gang (§ 186.22, subd. (b)(1)(C)). As to counts one and two, the information also alleged that a principal was armed with a firearm (§ 12022, subd. (a)(1)) and a principal personally used a firearm (§ 12022.53, subds. (b), (e)(1)). As to count three, it was alleged that a principal personally used a firearm (§ 12022.53, subds. (b), (e)(1)), a principal personally and intentionally discharged a firearm (§ 12022.53, subds. (c), (e)(1)), and use of the firearm caused great bodily injury and death (§ 12022.53, subds. (d), (e)).

At the conclusion of trial, the jury found Boston guilty of second-degree robbery on counts one and two and second-degree murder on count three. The jury found Marquis guilty of second-degree robbery on counts one and two and first-degree murder on count three. The jury found true the firearm and gang allegations on all counts for both defendants.

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[3]Rackley died in custody in 2015, prior to trial.

The court sentenced each defendant to five years in state prison on count one, plus ten years for the firearm enhancement pursuant to section 12022.53, subdivisions (b) and (e)(1), and one year on count two, plus three years and four months pursuant to section 12033.53, subdivisions (b) and (e)(1), for a total of 19 years and four months on counts one and two.

On count three, the court sentenced Boston to 15 years for second-degree murder, plus a consecutive sentence of 25 years to life pursuant to section 12022.53, subdivisions (d) and (e). The court sentenced Marquis to 25 years for first-degree murder, plus a consecutive sentence of 25 years to life pursuant to section 12022.53, subdivisions (d) and (e). For both defendants, the court stayed the additional firearm enhancements under section 12022.53. On all counts, the court struck the gang enhancement allegations pursuant to section 186.22, subdivision (b)(1)(C).

Defendants timely appealed.

## II. *Evidence at Trial*

### A. *Prosecution evidence*

#### 1. *The vigil*

The prosecution presented evidence that Boston, Marquis, and Rackley are members of the Stxccys, a group or family within the Rollin 20s Crip gang in Long Beach. On the afternoon of May 3, 2013, the three of them attended a candlelight vigil for Stxccys member Devin Smith, who had been murdered two days earlier. Afterward, they went to the home of Rackley's father, along with Jessica Blade, Boston's sister, and Nichelle Carr, Boston and Jessica's cousin. Around 10:00 p.m., the group left that location in two vehicles, a gold Acura registered to Rackley's father, and a Suburban registered to Boston's father.

2. *The shooting*

That evening, a few minutes after 10:00 p.m., Kristoben and Brian[4] were walking near 10th Street and Linden Avenue in Long Beach. Brian was a member of the Insane Crip gang, a rival gang of the Rollin 20s Crips. In an interview with an officer from the Long Beach Police Department (LBPD) later that night, Kristoben stated that he saw a mid-90's tan Lexus driving westbound on 10th Street. As Kristoben and Brian were crossing Linden Avenue, the Lexus turned in front of them and stopped. The driver's side rear passenger got out of the car, pointed a gun at them from five or six feet away, and fired two shots. Kristoben also heard the gunman ask, "Where you from?"[5] As shots were fired, Kristoben fled the scene. Later that night, he described the shooter as a black male, approximately 18 to 20 years old, five feet seven to five feet nine inches tall, with a thin build. He also recalled the shooter had a fade-style haircut, was wearing a black t-shirt and gray basketball shorts, and had tattoos on his right forearm, including one of a rose. Kristoben also told the officer that there was a front passenger in the car, but he could not describe that person.

At trial, Kristoben testified that he heard Brian say, "Run," so he ran, and he heard two or three gunshots. He denied seeing the car turn in front of them. He also denied most of his other prior statements to police, including his description of the car and

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[4]Pursuant to California Rules of Court, rule 8.90 (b)(4), we refer to the victims in this case by first name to protect their personal privacy interests.

[5]The interviewing officer testified that that question in connection with a shooting usually meant, "What gang are you from? Are you gang-banging?"

of the three male suspects, and that he heard the shooter ask, "Where you from?" as he was firing. He previously failed to appear for court in this case on two occasions, but he denied that he was scared, insisting he had "things to do." He said he did not recall that Brian was a gang member, "but I don't really judge people."

Jackie Robinson lived in a nearby apartment at the time of the shooting. He testified that on that night, he heard a commotion and looked out the window. He saw a man standing on the corner of Linden Avenue and 10th Street. Then, he heard gunshots and saw a brown, older-model Lexus driving down Linden.[6] As the car drove away down Linden, it passed in front of his apartment. Robinson saw three black men in the car.

LBPD detective Gregory Krabbe and his partner were assigned to investigate the case. They obtained video footage of the shooting from the surveillance cameras of a nearby hospital. The prosecution played portions of the video at trial, showing the victims walking, an Acura and a Suburban driving eastbound on 10th, then making a U-turn and driving back westbound, and then the shooting itself. Krabbe also testified that the Suburban must have pulled to the curb during the shooting, because the video footage showed a white truck driving past the scene; a few moments earlier, that truck was visible behind the Suburban and it could not have otherwise passed on the two-lane road. The

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[6]Although Kristoben and Robinson both described the car containing the shooter as a Lexus, it was undisputed at trial that two cars were involved in the incident - the gold Acura and the Suburban.

video shows Brian fall, get up and run, and then fall again about a block away.

Brian was taken to the hospital and pronounced dead a few hours later. His autopsy showed he sustained three gunshot wounds, causing his death.

LBPD officers recovered a cell phone, phone case, and battery from the middle of Linden Avenue at the scene. The DNA from swabs taken from the cell phone and cell phone cover matched that of Boston. Cell tower records corresponding to that phone showed that the phone had been at Rackley's father's house between 9:21 and 10:00 p.m. on May 3, 2013. The records were also consistent with the phone then traveling toward the scene of the shooting, where it was dropped and the battery ejected from the phone.

LBPD officers retrieved a number of photos showing defendants and Rackley from that phone; they also retrieved photos from Rackley's phone, which they confiscated when Rackley was arrested.

Officers also recovered three nine-millimeter bullet casings from the street, as well as a lead projectile from the inside of the base of a trash can at the corner of Linden and 10th. An LBPD criminalist opined that all of the casings were fired from the same gun. She also testified that the type of firing pin impression on the casings was typical for a Glock firearm.

3. *The robbery*[7]

On May 5, 2013 at around 11:30 p.m., Bruce and Sy were working at a liquor store in Long Beach. Two men came into the

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[7] At trial, both defendants admitted to the robbery. They argued, however, that it was not committed to benefit the gang. Neither defendant challenges the robbery conviction on appeal.

store with guns. At trial, Bruce identified Boston and Marquis as the first two suspects to enter the store. He testified that Boston was holding a silver, "revolver-type gun." Boston came in, pointed his gun at Bruce and Sy, and told them to get on the floor; he threatened that if they did not get down and stay still, he would kill them. Bruce and Sy complied. A third man (whom Bruce had identified as Rackley during the preliminary hearing) entered, pulled Bruce off the floor and put a gun to his head. Rackley told Bruce to open the store register and demanded that he give them cash or they would kill him. Bruce complied. Boston also took Bruce's wallet. Bruce testified that the men took about $1,000 from the register and also stole cigarettes and liquor from the store.

The robbery was captured from multiple angles by video cameras inside and outside the store. The prosecutor played the video at trial and also showed Bruce stills of the suspects' faces from the footage. Bruce only recalled seeing Boston and Rackley holding guns that night; however, the video footage shows all three suspects holding guns during the robbery.

Sy also testified about the robbery. He identified Boston during the preliminary hearing as the first suspect who came in and told him to get down, but could not do so at trial. Sy claimed he did not see anything after he lay down on the floor.

LBPD detective Mark Steenhausen was assigned to investigate the robbery. He testified that he compared the vehicle seen in the robbery video with a photo of Rackley's father's Acura, which was provided by Detective McGuire from the murder investigation. The detectives also matched video stills from the robbery to photos of Boston and Marquis taken from the phone at the scene of the shooting.

4. *Jail conversations and calls*

Initially, police arrested Rackley and Marquis for the robbery and Detective Steenhausen showed them some of the evidence from the liquor store cameras.[8] They placed Marquis and Rackley in side-by-side cells wired for audio and recorded conversations between them. Portions of these recordings and the corresponding transcripts were introduced at trial. The recordings captured Marquis telling Rackley that "N-Hustle" (another Rollin 20 member named Nigel Dunn) had "the black thing." Marquis also said that someone needed to "go to N-Hustle and get that. Put that fucker in the flood channel." Krabbe opined these conversations were discussing disposing of the gun used in the murder. Krabbe also interpreted other slang by Marquis and Rackley as multiple references to the murder, including "foo-foo shit," the "hot one," and stating that the police "got pictures of that Acura on the one."

The prosecution also played portions of recorded phone calls made from jail by Marquis and Rackley, including calls to Jessica and Boston (who had not yet been arrested) and calls to Marquis's wife, Valarie. In these calls, they again discussed possession by "N-Hustle" of "the black thing." Jessica told them, "I couldn't find . . . the black thing." Rackley and Marquis also spoke to Boston and told him to "stay out of sight."

5. *Jessica's interview and testimony*

Detective Krabbe and his partner, Mark McGuire, interviewed Jessica, Boston's sister, in November 2013. At the beginning of the interview, Jessica denied committing any crime and said she had been working as an airport security officer in

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[8] Defendants and Rackley were charged with the murder about six months later.

Alaska and a peace officer in Georgia. She also denied that she was a member of the gang, but acknowledged that she referred to herself as "Lady Stxccy" on her Facebook profile page and in conversations with other gang members.

However, later in the interview, Jessica admitted to the detectives that on the night of the shooting, she left with the group from Rackley's father's house. Rackley was driving his father's car, the gold Acura. Jessica was in her father's car, the Suburban, and her cousin, Carr, was driving. Marquis was in the Acura with Rackley. Marquis was sitting in the back seat and Boston was in the front passenger seat of the Acura. Rackley made a left turn and Marquis "got out and he shot the boy." Jessica was in the front passenger seat of the Suburban and saw Marquis get out of the Acura. She heard around four gunshots and could see the muzzle flash. She saw Marquis's "hand go out with the gun and shoot him."

While this was happening, Carr slowed the Suburban down and tried to turn around. They did not follow the Acura after that. Jessica denied knowing beforehand that the shooting was going to happen. She told the detectives that they were supposed to be going to her aunt's house, so that's what she thought they were doing. She didn't know who the victims were.

She also told the detectives that the gun used for the murder was black. She thought it was either a nine- millimeter or a .40 caliber Glock. She also admitted that Rackley and Marquis called her from jail. They wanted to get rid of the gun; Carr and Boston were "working on it."

After the shooting, Jessica said that Marquis stated he wondered whether he had killed the victim. Marquis also

suggested he had issues with the victim previously and "was waiting to get at him in a manner like that."

At the preliminary hearing and at trial, Jessica testified that she was driving the Suburban, not Carr as she had previously stated. She also said that Boston was in the Suburban and that Carr was in the Acura with Marquis and Rackley. She maintained her prior statement that Marquis was the shooter. She insisted that other than changing the positions of Carr, herself, and Boston in the vehicles, everything she previously told the detectives was true. She said that she "messed up" by lying and did so because she was scared. Boston was already in jail and she was trying to "allow Nichelle [Carr] to, you know, speak to somebody and come to tell the truth herself." She also stated that she was trying to protect Carr.

6. *Carr*

Carr testified at trial that at the time of the shooting, she was in the Acura with Marquis and Rackley, whom she was dating at the time. Jessica and Boston were in the Suburban, along with two other guys. After Rackley made the left turn onto Linden, Marquis asked Rackley to stop the car. He did. Marquis got out of the left side rear seat. She heard Marquis say, "Where you from?" to two guys walking behind the car, then she heard gunshots. She also testified that Marquis had Boston's phone at the time of the shooting.

In her original statement to police, Carr said she was in the Suburban. At trial she claimed this statement was a lie and that she had been feeling guilty about not telling the truth. In February 2014, she travelled from her home in Georgia to speak to the detectives again and tell the truth, that she was in the Acura and Boston was in the Suburban, in the front passenger

seat. She claimed she had lied previously to protect herself. She admitted that before her second statement in February 2014, she and Jessica discussed what they told police.

7. *Gang expert evidence*

The prosecution's gang expert, LBPD detective Sean Magee, testified that the Stxccys were a group, or family, within the Rollin 20 Crip gang. The biggest rival for the Rollin 20s gang was the Insane Crip gang. Magee testified that these two gangs had been engaged in murders back and forth since the mid-1980s. The area including 10th Street and Linden Avenue, where the shooting occurred, was territory claimed by both gangs. Magee opined that the victim, Brian, was a member of the Insane Crip gang.

Magee also opined that both defendants were Rollin 20 Crip members. Marquis used the gang monikers "Baby K," "Baby Killa Stxccy," and "Killa"; Boston used the monikers "Lil Stxccy" and "Lil." Rackley and Jessica were also members of the Rollin 20s. Carr and Valarie were not necessarily members, but were associated with the gang. Using photographs, Magee detailed the gang tattoos on both defendants, including what looked like either clouds or roses on Marquis's left forearm.

Magee testified that when gang members commit a violent crime, they typically do so in groups. That tactic helps build camaraderie and trust, and also provides support for the other gang members. An accompanying gang member could serve as "a look-out, . . . a driver, even moral support." Given a hypothetical matching the facts of the murder, he opined that the shooting benefitted the gang. Further, the presence of a front seat passenger would benefit the gang by "going with it, not doing anything to prevent it, so that helps the camaraderie. So you can

also be a look-out." The use of a second, or "follow on" car with gang members in it would also benefit the gang and was a frequently used tactic.

**B. *Boston's defense evidence***

Lorraine Davis, Boston and Jessica's mother, testified in Boston's defense. She testified that Marquis's father approached her and Tiffany Blade, Boston's wife, at the courthouse on February 16, 2016. He said, "Jessica should not show up for court. I will pay to keep her away." Tiffany confirmed this story, but testified that it happened in November 2015. Tiffany also stated that Marquis's father called her the next day and again suggested that Jessica should not testify.

Defense investigator Harold Hoffman testified regarding an interview he conducted on May 9, 2014 with Robinson, the neighbor eyewitness to the shooting. Hoffman said he showed Robinson a photo of Carr, and Robinson said it was possible that a woman could have been in the Acura, rather than three men.[9]

Boston testified on his own behalf. He admitted being a member of the Rollin 20s, stating he had joined the gang at age 13. He and Marquis were friends and had known each other since high school. Boston met Rackley more recently, in about 2012.

On May 3, 2013, he and Marquis attended the vigil for Smith around 4:00 p.m. Boston knew Devin Smith and acknowledged that word on the street at the time was that Smith was killed by an Insane Crip. After the vigil, Boston and Marquis met up with other people at Rackley's father's house.

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[9] During Robinson's testimony, he stated he did not remember being asked those questions or shown the photo. He also reiterated that he was certain he saw three men in the car.

When the group left the house a few hours later, Boston and Jessica were in the Suburban along with two other men; Carr, Rackley, and Marquis were in the Acura. They were heading to 17th Street and Gundry Avenue to pick up two girls. As they drove down 10th Avenue, the Acura made a U-turn and the Suburban followed. Boston testified that at the time, he wondered why Rackley was turning around. The Suburban, driven by Jessica, pulled up next to the Acura at a stop light, and Boston said he was planning to ask what was going on. But as soon as they got close, the light changed, and the Acura drove off.

A short time later, the Acura stopped. Marquis "got out of the car and did the shooting." Boston testified that he wasn't expecting the shooting and it "shocked me." He claimed there was no communication between the cars and he did not have a gun on him. After the shooting, the Suburban continued down 10th Street to the original destination and the Acura drove down Linden Avenue. The group met up about 20 or 30 minutes later. When Marquis arrived, Boston asked him why the shooting happened "like that," since Boston's sister and cousin were with the group. Carr was really upset and crying.

According to Boston, the gun used in the shooting was a nine-millimeter black Glock; he had seen Rackley with the same gun before. Rackley "usually always" had a gun on him; conversely, Boston knew Marquis had not been carrying a gun earlier that day.

Marquis had borrowed Boston's phone earlier in the day and still had it at the time of the shooting. Boston testified that immediately after the shooting, he tried to reach Marquis by calling his own phone repeatedly from Jessica's phone. Then, when he saw Marquis, he realized his phone was missing and

"that was the big issue." On cross-examination, the prosecutor showed Boston the time stamp on the shooting video, which showed the Suburban leaving the scene of the shooting at 10:10 p.m. The call records from Boston's phone showed that the only call during that time period from Jessica's phone did not occur until 10:28 p.m. However, there were multiple calls to Boston's phone from Rackley's phone starting at 10:13 p.m. The prosecution suggested that Boston used Rackley's phone to call his phone while they were in the Acura after the shooting; Boston denied that he was in the Acura.

Boston admitted to committing the robbery of the liquor store with Marquis and Rackley on May 5, 2013. He said that they did it because he was desperate for money after his father died. They split the money from the robbery, which was only about $300. Rackley also used a black Glock pistol in the robbery.

**C. *Marquis's defense evidence***

Marquis's wife, Valarie, testified that she did not attend the vigil on May 3, 2013 with Marquis because she was on bed rest due to a high-risk pregnancy. Marquis returned home that evening around 8:45 p.m. Shortly after that, Valarie left the house to pick up some food, as shown by her text messages with a friend while she was out. She testified that Marquis stayed home while she picked up the food. She returned home before 10:00 p.m. and went to bed by 10:30. Marquis was home and did not leave all night.

Valarie allowed Boston and Jessica to stay with her family after their father died. But after about a week, she was fed up and asked them to leave.[10]

Valarie denied that Marquis was a gang member or that she was associated with the gang. When confronted during cross-examination with recorded conversations between her and Stxccy members discussing the shooting and using gang language, she repeatedly testified she did not recall having those conversations. She also testified that Marquis was left-handed. However, she acknowledged that the video from the liquor store showed Marquis holding a gun in his right hand.

Marquis did not testify.

## DISCUSSION

### I. *Marquis's Murder Conviction*

Marquis challenges the sufficiency of the evidence supporting his conviction for murder. We conclude there was sufficient evidence for the jury to find that he was the shooter, and therefore affirm his conviction.

In reviewing the sufficiency of the evidence, we 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.'" (*People v. Holt* (1997) 15 Cal.4th 619, 667.) We do not weigh the evidence or decide the credibility of the witnesses. We draw all reasonable inferences in favor of the judgment. "Reversal on this ground is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to

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[10] Boston denied this incident or any other conflict with Marquis prior to the shooting.

support [the conviction].'" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

At trial, multiple witnesses identified Marquis as the shooter. Although they changed other parts of their testimony between their initial statements to police and trial, both Jessica and Carr consistently stated that Marquis was in the rear of the Acura and then exited the vehicle immediately before shots were fired. Jessica testified that she specifically saw Marquis raise his hand holding the gun and shoot at Brian. Jessica also told police that Marquis said he had prior issues with the victim and wanted to confront him; after the shooting, Jessica heard Marquis say that he wondered whether he had killed the victim.

Boston also testified at trial that Marquis, who he considered a longtime friend, was the shooter. All three also testified that Marquis had borrowed Boston's phone earlier that day and had it in his possession at the time of the shooting, consistent with the phone being dropped at the scene. In addition, Kristoben (who was walking with the victim at the time) told the police that night that the shooter was a young, black man with a rose tattoo on his right forearm. Marquis had a rose or cloud tattoo on his left forearm. Kristoben and Carr also stated that the shooter asked the victim, "Where you from?" immediately before the shooting. As the prosecution's gang expert testified, that question under these circumstances suggested that the shooter belonged to a gang that was a rival of the victim's gang, the Insane Crips, and that the shooting was gang-related. There was also testimony that Marquis belonged to a rival gang, the Rollin 20s.

Marquis argues that Jessica, Carr, and Boston were all accomplices and therefore that their identifications of the shooter

cannot establish his guilt without corroboration. We are not persuaded.

Section 1111 provides in part: "A conviction cannot be had upon the testimony of an accomplice unless it be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof." The statute defines "accomplice" as: "one who is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given." (§ 1111.) The jury was instructed accordingly with CALCRIM No. 334 that it first had to decide whether Boston, Jessica, and/or Carr acted as an accomplice to the murder; then, for any witness determined to be an accomplice, "you may not convict a defendant of murder based on the witness' statement or testimony alone."

As an initial matter, we note that corroboration would be required *only* for witnesses the jury concluded acted as accomplices. It is not clear that there was sufficient evidence to support that conclusion as to all three witnesses—Boston, Jessica, and Carr—given the likelihood that only one of them was driving and the lack of other evidence of their prior knowledge of or assistance with the shooting. However, even assuming they were all accomplices, we find there was sufficient corroborating evidence to allow the jury to conclude that Marquis was the shooter.

"Section 1111 serves to ensure that a defendant will not be convicted solely upon the testimony of an accomplice because an accomplice is likely to have self-serving motives." (*People v. Davis* (2005) 36 Cal.4th 510, 547 (*Davis*).) Thus, "for the jury to

rely on an accomplice's testimony about the circumstances of an offense, it must find evidence that "'without aid from the accomplice's testimony, tend[s] to connect the defendant with the crime.'" [Citations.] 'The entire conduct of the parties, their relationship, acts, and conduct may be taken into consideration by the trier of fact in determining the sufficiency of the corroboration.'" (*People v. Romero and Self* (2015) 62 Cal.4th 1, 32 (*Romero*).) The evidence "'need not independently establish the identity of the victim's assailant' [citation], nor corroborate every fact to which the accomplice testifies [citation], and 'may be circumstantial or slight and entitled to little consideration when standing alone'" [citation]." (*Ibid*.) Such independent evidence "'is sufficient if it *does not require interpretation and direction from the testimony of the accomplice* yet tends to connect the defendant with the commission of the offense in such a way as reasonably may satisfy a jury that the accomplice is telling the truth.'" (*Davis, supra*, 36 Cal.4th at p. 543.) A reviewing court is bound by the trier of fact's determination on the issue of corroboration "'unless the corroborating evidence should not have been admitted or does not reasonably tend to connect the defendant with the commission of the crime.'" (*Romero, supra*, 62 Cal.4th at pp. 32-33.)

Here, multiple witnesses testified that Marquis was a member of the Rollin 20s Crips, including the gang expert, who evaluated and showed the jury photos of Marquis's numerous gang-related tattoos. The evidence established that the victim was a member of the Insane Crips, a rival gang. Valarie, Marquis's wife, confirmed that Marquis attended the vigil earlier the same day for another gang member killed by an Insane Crip member. In his initial statement, Kristoben described the

shooter as having a rose tattoo on his forearm, similar to one worn by Marquis. Moreover, in recorded jail conversations with Rackley, Marquis made repeated statements that referred to the murder, as interpreted by Detectives Krabbe and Magee. Marquis and Rackley also repeatedly discussed hiding and getting rid of "the black thing," which the detectives interpreted to mean a black gun. The jury reasonably could infer this discussion referenced a desire to dispose of the murder weapon, a black gun. Taken together, this evidence "'tends to connect the defendant with the commission of the offense in such a way as reasonably may satisfy a jury that the accomplice is telling the truth.'" (*Davis, supra*, 36 Cal.4th at p. 543.)

Marquis also argues that the testimony by Jessica and Carr was unreliable, given the inconsistencies in their testimony and their self-serving motive to avoid liability for themselves and their family member, Boston. He also points to other evidence supporting his claim, such as his wife's alibi for him and the absence of his DNA on the cell phone dropped at the scene. But we cannot reweigh the evidence or disturb credibility findings made by the jury. (See *People v. Bolin, supra,* 18 Cal.4th at p. 331.) Drawing all reasonable inferences in favor of the verdict, as we must, we conclude that sufficient evidence supported Marquis's murder conviction.

## II. *Boston's Murder Conviction*

Boston also contends there was insufficient evidence to support his murder conviction. We agree.

At trial, the prosecutor argued that Boston was guilty of murder under an aiding and abetting theory. "[A] person who aids and abets a crime is guilty of that crime even if someone else committed some or all of the criminal acts." (*People v. McCoy*

(2001) 25 Cal.4th 1111, 1117.) "[A] person aids and abets the commission of a crime when he or she, acting with (1) knowledge of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages or instigates, the commission of the crime." (*People v. Beeman* (1984) 35 Cal.3d 547, 561.) "Thus, proof of aider and abettor liability requires proof in three distinct areas: (a) the direct perpetrator's actus reus—a crime committed by the direct perpetrator, (b) the aider and abettor's mens rea—knowledge of the direct perpetrator's unlawful intent and an intent to assist in achieving those unlawful ends, and (c) the aider and abettor's actus reus—conduct by the aider and abettor that in fact assists the achievement of the crime." (*People v. Perez* (2005) 35 Cal.4th 1219, 1225.) "[N]either presence at the scene of a crime nor knowledge of, but failure to prevent it, is sufficient to establish aiding and abetting its commission. [Citations.] However, '[a]mong the factors which may be considered in making the determination of aiding and abetting are: presence at the scene of the crime, companionship, and conduct before and after the offense.'" (*People v. Campbell* (1994) 25 Cal.App.4th 402, 409.)

Here, respondent points to Boston's presence at the scene and "strong gang motive to participate in the murder" as factors supporting the conviction. Boston's presence as a passenger in either the Acura or the Suburban at the time of the shooting was undisputed. It was also undisputed that earlier in the day, he had attended a vigil for a fellow gang member who was killed by a rival gang member, from which a jury could infer a motive to engage in an act of revenge upon that rival. But presence and motive alone are insufficient to support a conviction on an aiding

and abetting theory, absent facts to establish, for example, knowledge of the shooter's intent or any assistance in achieving the crime. In addition, respondent contends the evidence established that Boston "implicitly encouraged the murder by showing support, comradery [*sic*], and acting as a lookout." But while the gang expert testified generally that a gang member present in one of two vehicles could serve in such a role and therefore benefit the gang, respondent fails to point to any evidence suggesting that Boston did so in this instance. There is no evidence that the group left Rackley's father's house that night with the intention of hunting for rival gang members, that the shooting was planned, that Boston knew the victim's affiliation, or that Boston saw him walking down the street prior to the incident. Boston was not the driver of either vehicle, there is no evidence he was armed, and no evidence of anything he did to encourage the shooting or act as a lookout, apart from his mere presence in one of the cars.[11]

Indeed, the cases cited by respondent underscore the absence of evidence here. For example, in *People v. Nguyen*

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[11]During oral argument, Boston's counsel also pointed to a statement made by Rackley to Marquis during a recorded jail conversation that "if they get that they gonna get all three of us." Boston's counsel argued, for the first time, that this statement referred to the gun used in the shooting and therefore implicated Boston in that crime. Boston failed to raise this point until oral argument and we therefore deem it forfeited. (See *Kinney v. Vaccari* (1980) 27 Cal.3d 348, 356, fn. 6 ["An appellate court is not required to consider any point made for the first time at oral argument"]; *Bonfigli v. Strachan* (2011) 192 Cal.App.4th 1302, 1311, fn. 4 ["[C]ontentions raised on appeal for the first time at oral argument are generally waived."].)

(2015) 61 Cal.4th 1015, 1053 (*Nguyen*), the defendant challenged his conviction for attempted murder of a rival gang member on an aiding and abetting theory. The evidence showed that defendant was a passenger in the back seat of a car that was following a car driven by the victim and carrying several members of a rival gang. When the car in which defendant was riding passed the victim's car, the defendant and the other passengers stared back at the victim's car; defendant's car "then idled in the parking lot of a fast food restaurant, with its occupants 'all like looking out and stuff.'" (*Ibid*.) After the victim's car passed, the car carrying defendant followed. A few blocks later, the front passenger in defendant's car shot the victim. (*Ibid*.) A few days later, defendant went to the apartment of one of the rival gang members who had been in the rival car, and asked him, "'What's up with the cops?'" (*Id*. at p. 1054.) The prosecution's gang expert also testified that Asian gangs in Orange County, such as defendant's, "tended not to be associated with a particular 'turf'" but instead "'go from place to place around the community hunting for their rivals.'" (*Ibid*.) The expert also explained that if a gang member was not the shooter and "'they're in the back seat' of the car, a gang member would be expected to serve as a lookout." (*Ibid*.) In addition, the expert testified that the two gangs were in a "state of war" at the time of the shooting. (*Ibid*.)

The Supreme Court found, although the issue was close, there was sufficient evidence to support the conviction. (*Nguyen, supra,* 61 Cal.4th at p. 1055-1056.) The court noted that "[a]lthough defendant's "'mere presence alone at the scene of the crime is not sufficient to make [him] a participant,'" his presence in the car "'may be [a] circumstance[ ] that can be considered by

the jury with the other evidence in passing on his guilt or innocence.'" (*Ibid*.) In addition to the defendant's presence, the court noted that the car in which defendant was riding waited for and then pursued the victim's car, defendant stared at the occupants of the other car, and then visited a rival gang witness a few days later. (*Ibid*.) "Considering this evidence in the context of the ongoing gang war" between the rival gangs, as well as the gang practices described by the expert, "the jury could have inferred that defendant knew of [the shooter's] intent to kill, shared that intent, and aided [the shooter] by spotting potential targets." (*Ibid*.)

This case lacks similar evidence establishing Boston's role in the shooting. Without that evidence, the "gang evidence standing alone cannot prove a defendant is an aider and abettor to a crime." (*People v. Guillen* (2014) 227 Cal.App.4th 934, 992; see also *Nguyen, supra,* 61 Cal.4th at p. 1055.)

Respondent also argues that the jury could have found the murder was a natural and probable consequence of "the assault that Blade aided and abetted." (See *People v. Medina* (2009) 46 Cal.4th 913; *People v. Chiu* (2014) 59 Cal.4th 155,161.) "'A person who knowingly aids and abets criminal conduct is guilty of not only the intended crime [target offense] but also of any other crime the perpetrator actually commits [nontarget offense] that is a natural and probable consequence of the intended crime. The latter question is not whether the aider and abettor actually foresaw the additional crime, but whether, judged objectively, it was reasonably foreseeable.'" (*People v. Medina, supra,* 46 Cal.4th at p. 920.)

Here, respondent suggests the jury could have found the target offense was an assault on the victims, and therefore

Boston could be guilty of aiding and abetting the shooting as well. But there is no evidence supporting Boston's participation in any purported assault on the victims, any more than the shooting. (Cf. *Medina, supra*, 46 Cal.4th at p. 922 [shooting of victim reasonably foreseeable consequence of gang assault in which defendant participated].) Accordingly, we reverse Boston's conviction on count three for second-degree murder.[12]

## III. *Marquis's Motion to Sever Robbery Counts*

Marquis also contends the trial court erred in denying his motion to sever trial on the robbery counts from the murder count. We find no abuse of discretion and therefore affirm.

### A. *Factual Background*

Prior to trial, defendants filed motions to sever the robbery counts from the murder counts and for separate trials of the two defendants. The court held a hearing on November 4, 2015. Marquis's counsel argued that the murder and robbery were unrelated and were different types of crimes. He also argued that it would be highly prejudicial to try the counts together, given the video evidence showing defendants and Rackley participating in the robbery. Thus, he argued the jury would likely conclude, based on the robbery evidence, that defendants and Rackley also committed the shooting together two days earlier. He argued that the evidence of defendants' involvement in the shooting was much weaker. Counsel for both defendants also argued that the prosecution's cross-admissible evidence was limited and did not outweigh the potential prejudice. The

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[12] In light of this determination, we need not reach Boston's claims of error regarding: (1) the admission of Jessica's statements to police; (2) the court's denial of his motion to sever; and (3) his request for a *Franklin* remand.

prosecutor argued against severance, based on the cross-admissibility of evidence including the gun, the car, and jailhouse conversations.

The court denied the motions,[13] finding that "the two crimes are that of violence involving firearms." The court further found there was "cross-admissibility based on the car, the weapon, and the defendants acting together in concert in armed incidents."

**B. *Applicable Law***

Marquis does not dispute that the charges were properly joined under section 954.[14] Nevertheless, "the trial court retains discretion to try them separately, but '[t]he burden is on the party seeking severance to clearly establish that there is a substantial danger of prejudice requiring that the charges be separately tried.'" (*Armstrong, supra*, 1 Cal.5th at p. 455.) "As we often have observed, because consolidation or joinder of charged offenses ordinarily promotes efficiency, that is the course

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[13]During argument at the hearing below, defense counsel focused exclusively on the motion to sever the counts. The court denied that motion as well as the motion for separate trials. On appeal, Marquis challenges only the court's refusal to sever the robbery from the murder counts.

[14]"Section 954 provides that 'two or more different offenses' may be charged in the same pleading if the offenses are either 'connected together in their commission' or 'of the same class.' This 'statute permits the joinder of different offenses, even though they do not relate to the same transaction or event, if there is a common element of substantial importance in their commission, for the joinder prevents repetition of evidence and saves time and expense to the state as well as to the defendant.'" (*People v. Armstrong* (2016) 1 Cal.5th 432, 455 (*Armstrong*).)

of action preferred by the law." (*Alcala v. Superior Court* (2008) 43 Cal.4th 1205, 1220 (*Alcala* ).)

In ruling on a severance motion, "'the court must assess the likelihood that a jury not otherwise convinced beyond a reasonable doubt of the defendant's guilt of one or more of the charged offenses might permit the knowledge of defendant's other criminal activity to tip the balance and convict him.'" (*Armstrong, supra*, 1 Cal.5th at p. 455.) We review the trial court's decision to deny a severance motion for abuse of discretion. (*Id.* at pp. 455-456; *Alcala, supra*, 43 Cal.4th at p. 1220.) "To establish an abuse of discretion, the defendant must make a 'clear showing of prejudice.'" (*Armstrong, supra*, 1 Cal.5th at p. 456.)

We consider "the record before the trial court when it made its ruling." (*Alcala, supra*, 43 Cal.4th at p. 1220.) We first look to whether evidence of each of the offenses would be cross-admissible in "'hypothetical separate trials.'" (*Armstrong, supra*, 1 Cal.5th at p. 456; *People v. Soper* (2009) 45 Cal.4th 759, 774.) If so, "'that factor alone is normally sufficient to dispel any suggestion of prejudice and to justify a trial court's refusal to sever properly joined charges.'" (*Armstrong, supra*, 1 Cal.5th at p. 456.)

On the other hand, if the evidence is not cross-admissible, we then consider "'whether the benefits of joinder were sufficiently substantial to outweigh the possible "spill-over" effect of the "other-crimes" evidence.'" (*Armstrong, supra*, 1 Cal.5th at p. 456.) In making this assessment, we consider several additional factors, any of which might establish an abuse of discretion, including: "(1) whether some of the charges are particularly likely to inflame the jury against the defendant; [or]

(2) whether a weak case has been joined with a strong case or another weak case so that the totality of the evidence may alter the outcome as to some or all of the charges." (*Ibid*.)

**C. *Analysis***

Marquis contends the trial court abused its discretion in denying his motion to sever because the evidence was not cross-admissible between the robbery and murder counts. Moreover, he argues that the robbery evidence was particularly inflammatory and significantly stronger than the evidence tying him to the murder. We conclude that even if the robbery and murder offenses had been tried separately, evidence of each would have been admissible in the other trial; therefore, the court did not abuse its discretion in denying defendants' motions to sever the charges.

In denying the motion to sever, the trial court relied on the cross-admissibility of evidence related to the Acura and the gun. Marquis contends this evidence was not actually cross-admissible. We disagree. With respect to the Acura, Marquis contends that "[a]lthough a vehicle resembling the Acura that was involved in the murder incident is visible on the video outside [the liquor store] shortly before the robberies, it was never established that the sedan was actually the same vehicle." But Detective Steenhausen testified that he compared the vehicle seen in the robbery video with a photo of Rackley's father's Acura (provided by Detective McGuire from the murder investigation) and showed the photo to Marquis when he interviewed him about the robbery. Rackley and Marquis were later recorded discussing the photo of the Acura. The evidence regarding the Acura was thus relevant to identifying the suspects in both crimes, and therefore would have been cross-admissible.

With respect to the gun, the prosecutor argued that the gun used in the murder was the same as the gun used by Rackley during the robbery. There was also evidence introduced at trial comparing the color, shape, and possible type of gun used in both crimes, as well as the type of gun Rackley typically carried. This evidence would have been cross-admissible as relevant to identity, regardless of Marquis's contention that it was not definitively proven that it was the same gun.

Further, as respondent argues, some of the recorded jailhouse conversations were cross-admissible. Much of the coded discussion between Rackley and Marquis, including references to a gun, photos, and a car, is only decipherable in the context of both crimes and their overlapping investigations. Those conversations would have been relevant to and admissible for both the robbery and murder charges. Marquis's suggestion otherwise because the recordings do not prove that he shot Brian is unsupported.

We also reject Marquis's contention that the evidence of his participation in the shooting was significantly weaker than that of the robbery, resulting in prejudice from the denial of his motion to sever. Marquis asserts that there was insufficient evidence to support his identification as the shooter, an argument we previously rejected. While the evidence of the robbery was unquestionably strong, we are not convinced that the evidence of the shooting was so comparatively weak that refusing to sever the counts was an abuse of the trial court's discretion. (*People v. Mayfield* (1997) 14 Cal.4th 668, 721 abrogated on other grounds by *People v. Scott* (2015) 61 Cal.4th 363. ["[T]o establish prejudice defendant must show more than the absence of cross-admissibility of evidence. He must show also, for example, that

evidence of guilt was significantly weaker as to one group of offenses, or that one group of offenses was significantly more inflammatory than the other."] See also *People v. Sandoval* (1992) 4 Cal.4th 155, 172-173.)

For the same reasons, we reject Marquis's claim that the joinder of the charges was "so grossly unfair" that it deprived him of a fair trial or due process. Having found that the trial court did not abuse its discretion in denying severance of the charges, we must also "inquire whether events *after* the court's ruling demonstrate that joinder actually resulted in 'gross unfairness' amounting to a denial of defendant's constitutional right to fair trial or due process of law." (*People v. Merriman* (2014) 60 Cal.4th 1, 46.) Marquis argues that, in hindsight, the failure to sever the charges was grossly unfair because the robbery charges were essentially undisputed, while the identity of the shooter was "strongly contested" and "susceptible of a reasonable doubt;" thus, the strength of the robbery evidence was used to "fill in the evidentiary gaps" for the murder, as highlighted by the prosecutor's argument that Marquis, Boston, and Rackley committed both crimes together.

But all of this evidence was known to, and carefully weighed by, the court at the time it ruled on the motion to sever. (See *Merriman, supra*, 60 Cal.4th at p. 46 [rejecting defendant's claim of gross unfairness].) Moreover, as previously discussed, we reject Marquis's arguments regarding the prejudice he ascribes to the relative strengths and weaknesses of the robbery and murder charges. As such, we conclude there was no reasonable probability that the joinder of counts tainted the jury's verdicts in this case. (See *Merriman, supra*, 60 Cal.4th at p. 49 [reversal for gross unfairness warranted only where it is

"'reasonably probable that the jury was influenced [by the joinder] in its verdict of guilt"']. )[15]

## IV. *Remand To Exercise Discretion Under Section 12022.53*

Boston and Marquis contend that we should remand the case to allow the trial court to exercise its discretion to retain or strike the enhancements to their respective sentences under section 12022.53. Respondent concedes that remand is proper for both defendants. We agree, and therefore remand on the remaining robbery counts (counts one and two) for Boston and on all counts for Marquis.

Each defendant's sentence included the following firearms enhancements: 25 years to life under section 12022.53, subdivisions (d) and (e) for the murder conviction; 10 years under section 12022.53, subdivisions (b) and (e) for the robbery conviction on count one; and three years and four months under section 12022.53, subdivisions (b) and (e) for the robbery conviction in count two. At the time of their sentencing in February 2017, the trial court was required to impose these enhancements. However, under a recent amendment to section 12022.53, effective January 1, 2018, subdivision (h) of that statute gives the trial court the discretion to strike a section 12022.53 enhancement. The amendment applies to all cases, like

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[15]We also note that the jury was instructed with CALCRIM No. 203 to consider the evidence and render a decision separately as to each defendant and each charge. We presume the jury followed these instructions. (See, e.g., *People v. Osband* (1996) 13 Cal.4th 622, 717 [reviewing court presumes "'that jurors treat the court's instructions as a statement of the law by a judge, and the prosecutor's comments as words spoken by an advocate in an attempt to persuade"'].)

this one, not yet final on appeal when the amendment took effect. (See *People v. Chavez* (2018) 21 Cal.App.5th 971, 1020; *People v. Woods* (2018) 19 Cal.App.5th 1080, 1090.)

Accordingly, we find that remand is appropriate to allow for new sentencing hearings regarding counts one and two as to Boston and on all counts as to Marquis. By remanding, we are not suggesting how the court should exercise its discretion under section 12022.53, subdivision (h), but rather giving it the opportunity to do so in the first instance.

## V. *Remand Under* Franklin

Marquis was 23 years old when he committed the crimes in this case. Under *Franklin, supra*, 63 Cal.4th 261, he urges us to remand the case to allow him to make a record of information relevant to his eventual youth offender parole hearing. Respondent concedes that a remand for this additional limited purpose is appropriate. We agree.

In *Franklin, supra*, 63 Cal.4th at p. 276, the juvenile defendant challenged his sentence of 50 years to life as the "functional equivalent" of life without parole. The court rejected that argument based on sections 3051, 3046, subdivision (c), and 4801, subdivision (c), which entitle juvenile offenders to a "'youth offender parole hearing'" during the 25th year of their sentence. (*Id*. at pp. 276-277.) The court further held that a remand was warranted to determine whether the defendant received sufficient opportunity "to put on the record the kinds of information that sections 3051 and 4801 deem relevant at a youth offender parole hearing," i.e., "youth-related factors, such as [the defendant's] cognitive ability, character, and social and family background at the time of the offense," considered in light of "any subsequent growth and increased maturity." (*Franklin,*

*supra*, 63 Cal.4th at pp. 269, 277, 284; accord, §§ 3051, subd. (f)(1), (f)(2), 4801, subd. (c).) If, on remand, the trial court determines the defendant was denied a sufficient opportunity to present such evidence, the defendant "may place on the record any documents, evaluations, or testimony (subject to cross-examination) that may be relevant at his eventual youth offender parole hearing, and the prosecution likewise may put on the record any evidence that demonstrates [his] culpability or cognitive maturity, or otherwise bears on the influence of youth-related factors." (*Id.* at p. 284.) "The goal of any such proceeding is to provide an opportunity for the parties to make an accurate record of the juvenile offender's characteristics and circumstances at the time of the offense so that the Board, years later, may properly discharge its obligation to 'give great weight to' youth-related factors (§ 4801, subd. (c)) in determining whether the offender is 'fit to rejoin society' despite having committed a serious crime 'while he was a child in the eyes of the law' [citation]." (*Ibid.*)

Marquis was sentenced in February 2017, after the *Franklin* decision was issued on May 26, 2016. However, at the time, only defendants under the age of 23 at the time of the offense were eligible for a youth offender parole hearing under section 3051. (Stats. 2015, ch. 471, § 1, p. 4175.) The statute was amended as of January 1, 2018 to apply to those who committed crimes when they were 25 years of age or younger. (Stats. 2017, ch. 675, § 1, p. 5023.)

Because Marquis was 23 when he committed the controlling offenses, the holding in *Franklin* had no application to him at the time of his sentencing. As such, it is unlikely that his counsel appreciated the need to make an adequate record for the

purpose of an eventual youth parole hearing. Accordingly, we remand the matter to the trial court to conduct a hearing at which the parties may address and submit evidence bearing on relevant youth-related factors for Marquis's eventual parole hearing. (*Franklin, supra*, 63 Cal.4th at pp. 284, 286–287.)

## VI. *Clerical Errors in Minute Orders and Abstracts of Judgment*

Finally, both defendants request the correction of several errors in the minute orders reflecting the sentences imposed by the court, and in the corresponding portions of the abstract of judgment. Respondent agrees.

As charged in the information and found true by the jury, counts one and two (robbery) included the special allegation that a principal used a firearm, pursuant to section 12022.53, subdivisions (b) and (e)(1).[16] Count three (murder) included the special allegations that a principal personally used a firearm (§ 12022.53, subds. (b) and (e)(1)), that a principal personally and intentionally discharged a firearm (§ 12022.53, subds. (c) and (e)(1)), and that the use of the firearm caused great bodily injury and death (§ 12022.53, subds. (d) and (e)).

The court imposed the firearm enhancement on counts one and two pursuant to section 12022.53, subdivisions (b) and (e)(1). However, the minute order reflecting the sentence states

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[16]Section 12022.53 subdivision (b) applies to "any person who, in the commission of a felony specified in subdivision (a), personally uses a firearm." Under subdivision (e)(1), this enhancement applies to "any person who is a principal in the commission of an offense," as long as the prosecution pleads and proves the gang enhancement under section 186.22, subdivision (b) and a principal in the offense committed the firearm act specified.

incorrectly that the court imposed the enhancements "pursuant to Penal Code section 12022.53(b) thru (e) [*sic*]." On count three, the court imposed the firearm enhancement under section 12022.53, subdivisions (d)/(e) and stayed the additional firearm enhancements under section 12022.53, subdivisions (c)/(e), and (d)/(e). However, both the minute orders and the abstracts of judgment for defendants omit reference to subdivision (e) regarding the stayed enhancements.

"Courts may correct clerical errors at any time, and appellate courts ... that have properly assumed jurisdiction of cases have ordered correction of abstracts of judgment that did not accurately reflect the oral judgments of sentencing courts." (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) Defendants have requested that we correct these clerical errors, and respondent agrees. Accordingly, we remand with directions to make the corrections.

**DISPOSITION**

Boston Blade's conviction on count three is reversed. In addition, the matter is remanded for the limited purposes of allowing the court to exercise its discretion under section 12022.53, subdivision (h) as to both defendants, and providing Marquis Wilson the opportunity to make a record of his characteristics and circumstances at the time of the offenses as set forth in *Franklin, supra*, 63 Cal.4th 261.

Further, to the extent these enhancements remain upon remand, we direct the clerk of the superior court to correct the minute order and abstract of judgment to reflect: (1) for both defendants, the imposition on counts one and two of the firearm enhancement under section 12022.53, subdivisions (b) and (e)(1); and (2) for Marquis Wilson on count three, the stay of the

additional firearm enhancements under section 12022.53, subdivisions (c)/(e), and (d)/(e). In all other respects, the judgment is affirmed.

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

COLLINS, J.

We concur:

WILLHITE, ACTING P.J.

MICON, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.