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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

PAUL DANIEL LATANZIO,

Defendant and Appellant.

2d Crim. No. B231743
(Super. Ct. No. LA058670)
(Los Angeles County)

Paul Daniel Latanzio appeals from the judgment following his conviction by jury of first degree murder (Pen. Code, § 187, subd. (a)), discharging a firearm into an occupied vehicle (§ 246) and conspiracy to commit murder (§ 182, subd. (a)(1)).¹ The jury found true allegations that (1) in committing all three offenses, appellant personally used and intentionally discharged a firearm (§ 12022.53, subds. (b) & (c)); (2) in committing murder and discharging a firearm into an occupied vehicle, he personally and intentionally discharged a firearm causing the victim's death (*id.* subd. (d)); and (3) he committed each offense with the specific intent to promote, further, and assist criminal conduct by members of a criminal street gang (§ 186.22, subd. (b)(1)(C)). The trial court sentenced him to a prison term of 95 years to life.

¹ All statutory references are to the Penal Code.

Appellant contends that there is not adequate independent evidence to corroborate the accomplice testimony connecting him to the conspiracy to commit murder. He also challenges the sufficiency of the evidence to support the finding that he murdered the victim and discharged a firearm into an occupied vehicle for the benefit of his gang. He further requests that we direct the trial court to revise the minute order for the sentencing proceedings to conform to the oral pronouncement of judgment. We direct the court to correct that minute order and otherwise affirm the judgment.

BACKGROUND

In 2008, appellant belonged to a tagging crew called "BFL," which stands for "Brown for Life," "Bombing for Life," and "Blazing for Life." BFL had between 10 and 25 members, including appellant, Ariana Resendi, Dennis Runner, Jose Flores, Claudia Gamboa, Anthony Guzman, and his cousin, Juan Guzman. BFL evolved into a street gang after its activities expanded to include breaking into and stealing cars.

BFL and the Grumpy Winos, a rival tagging crew known as "GW," each claimed the area surrounding Cantara and Coldwater Canyon in North Hollywood as its "hood." BFL members Flores, Anthony Guzman and Juan Guzman lived in that area. A GW member known as "Demon" once aimed and fired a weapon at Flores. Anthony Guzman and Flores shared a 9 millimeter semiautomatic gun for their protection. BFL acquired several other weapons for its protection, including a .32 caliber semiautomatic gun that Resendi kept in her possession. Appellant kept two weapons in his possession (one broken .38 caliber revolver, and one functioning .38 caliber revolver).

For approximately five years before 2008, and for the first several weeks of 2008, BFL members Resendi and appellant were boyfriend and girlfriend. Appellant was BFL's leader, or "shot caller," and he valued that position.

January 21, 2008 Conspiracy to Commit Murder

A. Accomplice Testimony

Resendi testified that on January 21, 2008, she and appellant were driving to pick up Flores in appellant's grandmother's black Scion automobile. As they drove by the intersection of Cantara and Coldwater, they noticed "Guero" (whose name is Steve

Liuzza), a GW member, "maddogging" (glaring at) them. Resendi stopped the car. Appellant got out and approached Guero, who said, "This isn't your hood," and "Fuck B.F.L." Appellant responded, "This isn't your hood either"; "You don't have a hood"; and "Fuck G.W." Resendi left the car and approached the men. Guero punched appellant in the nose and they fought. Resendi tried to break up the fight. She grabbed Guero's sweater and hit him. Appellant also grabbed Guero's sweater. When an old man approached from a nearby house, Guero said, "Tell them to stop." Eventually, Guero freed his sweater from appellant and Resendi and ran toward another GW member's nearby home.

Sometime after seeing Guero, Resendi called Flores, and yelled for him to "Get the nine." He said he did not have it, and went to the fight scene to join them. Flores testified that appellant and Resendi were still yelling at someone when he arrived at the scene. He, appellant and Resendi got in the Scion. Appellant was angry, and said that he never ran from anyone. He told Resendi to drive to his house in Sherman Oaks so he could get a gun and return to look for Guero. Resendi suggested they steal a car first, instead of using his grandmother's Scion. They did not take the time to steal a car.

Resendi drove to appellant's house in Sherman Oaks, with appellant and Flores. Although both Flores and Resendi testified that they had a gun when they left appellant's home, their testimony differed as to whether appellant or Resendi retrieved it. Both testified that Resendi wiped down the bullets to remove fingerprints and loaded the gun. Resendi, appellant and Flores agreed to return to the fight scene with the gun and look for Guero.

With Resendi driving, appellant in the front passenger seat, holding the gun, and Flores in the back seat, they returned to the fight scene and found Guero holding a gun. Guero started shooting at them. Appellant put his hand through the passenger side window and fired back at him. Neither Guero nor appellant hit anyone, but one of Guero's bullets damaged a tire on the Scion.

Flores and Resendi each entered into a "Leniency Agreement" to testify against appellant in exchange for a lenient sentence for the January 21, 2008 crimes. The independent evidence presented to corroborate their testimony is described below.

B. Independent Evidence

Officer Enrique Guerrero, the prosecution's gang expert, testified that respect is critical in the gang culture. For example, because it displays disrespect, crossing out gang graffiti can trigger adverse consequences. Guerrero further testified that the BFL and GW gangs each claimed the area surrounding Cantara and Coldwater Canyon in North Hollywood as its "hood." Each gang crossed off the rival gang's graffiti and replaced it with its own. Guerrero knew GW member Steve Liuzza who used Guero as his gang moniker.

Tomas and Prieto Delgado witnessed the initial January 21, 2008 fight among appellant, Resendi, and Guero at the intersection of Cantara and Coldwater Canyon, from their vehicle. They observed a man (appellant) with a woman (Resendi) and a "second" unaccompanied man (Guero). The unaccompanied man struck the first blow when he hit the accompanied man. They saw the unaccompanied man leave the fight scene and go to a nearby home. The Delgados testified that they later saw the unaccompanied man return to the scene with two other young males. Tomas testified that he did not ever see the male and female (appellant and Resendi) after they walked away from the fight scene.

LAPD Detectives Martin Pinner and Jose Calzadillas interviewed the Delgados concerning the January 21 fight and showed them photo displays. During the interview, Tomas identified appellant and Resendi as people he recognized from the fight, and said that appellant was the man who was accompanied by a woman. At trial, he was unsure whether the man he identified had been the accompanied man or the unaccompanied man. Prieto identified a photograph of appellant as one of the men who was fighting.

Pinner testified that appellant's Sherman Oaks home is approximately three miles from the intersection of Coldwater Canyon and Cantara. On January 21, 2008, at

approximately 1:20 p.m., Los Angeles Police Department Officer Jorge Carballo and his partner went to that intersection in response to a "shots fired" call. Carballo testified that resident Iris Hernandez showed them fresh bullet holes in her home. They found an expended bullet near its front door and four casings across the street. Nobody was injured. The casings and bullet were nine millimeter.

Anthony Guzman testified that he, appellant, Resendi and Flores were members of BFL, and that appellant was its shot caller. He also told detectives that appellant kept a .38 weapon at his house.

After his arrest for a subsequent offense, during a recorded custodial telephone conversation, while discussing Resendi's cooperation with the police, appellant made the following statements: "I'm about to do life for some fool because BeeDee's [Resendi's] acting stupid dog, she's going to snitch everybody out. She's over here talking about - remember when we dumped on the gummy worms [GW] fool? Yeah, that fool snitched about that and everything fool." Gang expert Guerrero testified that among gang members, the term "dumped on" means shot at.

February through Early April 2008

In February 2008, appellant's "good friend" and "fellow," BFL member, Runner, was released from prison. On February 15, Resendi broke up with appellant. Within a few days, she was living with Runner. She was pregnant with Runner's child in March.

During a police interview, Anthony Guzman explained that appellant thought that Runner was trying to take over BFL. Flores testified that appellant told him that he thought that Runner was "back stabbing" him and that Runner wanted to become a shot caller. That upset appellant.

April 6, 2008 Murder of Dennis Runner

On April 6, 2008, Flores and appellant were drinking at appellant's house. Appellant called Gamboa and arranged to meet her. Appellant drove his grandmother's black Scion, with Flores riding along, to pick up Gamboa and her friend, Mahogeny Bennett. They all returned to appellant's house.

Sometime on April 6, Anthony Guzman told appellant that Runner was claiming that he owned the .38 caliber revolver in appellant's possession. Appellant got angry about Runner's claim, and asked Guzman where Resendi and Runner were. Appellant told Flores about Runner's claim. Flores said that appellant was infuriated and he tried to calm him down. When Flores suggested that they go talk to Runner, appellant said, "I'm done talking."

Appellant persistently tried to find Runner and Resendi. Throughout the day, he repeatedly urged Gamboa to call Resendi, who sold marijuana, and ask to buy some "weed." Gamboa called Resendi several times. Resendi told Gamboa she was with Runner and Juan Guzman, but agreed to meet her later with some marijuana.

Later that evening, Flores, Gamboa, and Bennett rode in the black Scion with appellant while he drove around looking for Runner and Resendi. They stopped at one house where a man stepped outside and spoke with appellant. Appellant said they were going to kill someone. After they left that man's house, Bennett noticed that appellant was holding a gun. Appellant again urged Gamboa to call Resendi. Gamboa later told appellant that Resendi and Runner were going to take Juan Guzman to his home on Troost and Sherman Way. Appellant drove to a location near Gamboa's house, and dropped her and Bennett off there.

Appellant drove his Scion to Juan Guzman's house, with Flores, who saw the .38 caliber revolver in the front pocket of appellant's sweatshirt. Flores thought that there might be a shooting. Appellant parked near Juan Guzman's house. Flores eventually got out, rang the bell, learned that Juan was not still home, and returned to the Scion. At Flores's suggestion, they left about 30 minutes later. Appellant drove to Danny's liquor store, parked, and went to a pay phone. He left the .38 on the driver's seat. He returned and said he had called his sister and learned that Resendi and Runner were on their way to Juan Guzman's house. He drove there again and parked nearby. Flores asked appellant why he needed the .38. He responded that it was for his protection. They sat and waited.

At approximately 9:30 p.m., Resendi and Runner decided to stop at Danny's liquor store on their way home. Meanwhile, Flores convinced appellant to take him home. While driving, appellant saw Resendi's car and said, "There they are." He made a U-turn and followed them. Resendi parked her car and went inside the liquor store. Runner stayed in the front passenger seat, with his feet on the dashboard. Appellant parked the Scion in a nearby driveway. Flores said, "Let's go talk to Dennis and Ariana." Appellant responded, "No," and told him to "stay in the car." Appellant took the .38 and ran toward the liquor store. Resendi heard gunshots, ran outside, and saw Runner, with wounds in his face, from bullets that had passed through the passenger window.

Flores also heard the shots. He moved to the Scion's driver's seat and drove into the street, intending to leave. When he saw appellant running toward the Scion, he waited. Appellant opened the car door, asked what Flores was doing, told him to get out of the driver's seat, pushed him to the passenger seat, got in, and drove away. While driving, appellant said, "Fuck, I fucked up, I gave it to him. I can't believe what happened. I fucked up." He said that Runner was "gone, I gave it to him. He's dead." He kept repeating that Runner was "gone."

Runner died from multiple gunshots wounds on the right side of his head. Stippling marks from the gunpowder indicated that his assailant had fired at him from close range (two feet or less). Two bullet wounds were fatal, including one in his temple.

During a search, police officers found a gun cleaning kit in appellant's garage. They also found photographs and other evidence of his BFL affiliation in his house.

DISCUSSION

Accomplice Testimony

Appellant contends that there was not sufficient independent evidence connecting him with the conspiracy to commit murder to corroborate the accomplice testimony. We disagree.

Section 1111 provides: "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. [¶] An accomplice is hereby defined 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."

""The trier of fact's determination on the issue of corroboration is binding on the reviewing court unless the corroborating evidence should not have been admitted or does not reasonably tend to connect the defendant with the commission of the crime." [Citation.] "*The corroborating evidence may be circumstantial or slight and entitled to little consideration when standing alone*, and it must tend to implicate the defendant by relating to an act that is an element of the crime. The corroborating evidence need not by itself establish every element of the crime, but it must, without aid from the accomplice's testimony, tend to connect the defendant with the crime." [Citation.]" (*People v. Thompson* (2010) 49 Cal.4th 79, 123-124, italics added.) It need not independently establish the defendant's identity as the perpetrator. (*People v. Abilez* (2007) 41 Cal.4th 472, 506.) Only a portion of the accomplice's testimony need be corroborated. (*People v. DeJesus* (1995) 38 Cal.App.4th 1, 25.)

Here, the trial court instructed the jury with CALCRIM Nos. 334 and 335 which defined an accomplice; stated as a matter of law that Resendi and Flores were accomplices; that jurors should view their testimony with caution; and explained that their accomplice testimony required corroboration. The instructions also described the standard for determining whether accomplice testimony was corroborated.

"Corroborating evidence is sufficient if it tends to implicate the defendant and thus relates to some act or fact that is an element of the crime. [Citations.]" (*People v. Avila* (2006) 38 Cal.4th 491, 563.) Sufficient evidence corroborated Flores's and Resendi's testimony and implicated appellant in the January 21, 2008 conspiracy to commit murder. For example, independent evidence established that the shooting occurred at the location described by the accomplices; that appellant kept a gun at his house; and that Guero fought against appellant and Resendi at the shooting scene, shortly

before the shooting. The Delgados' recollections of the initial fight mirrored those of Resendi with respect to the person who threw the first blow; the way Guero ran into a house upon escaping the grasp of appellant and Resendi; and the fact that Resendi and appellant left together after the fight. Independent evidence also established that the distance from the fight scene to appellant's house was just three miles, and that the shooting occurred before 1:20 p.m.

Moreover, in a recorded telephone conversation, appellant referred to the time when "we dumped on [shot at]" the GW. The independent evidence reasonably tends to connect appellant with the conspiracy to commit murder by shooting at GW member, Guero, and corroborates the accomplice testimony. (*People v. Thompson*, *supra*, 49 Cal.4th at pp. 123-124.)

Gang Enhancement

Appellant contends that there is not sufficient evidence to support the finding that he murdered the victim and discharged a firearm into an occupied vehicle for the benefit of his gang. We disagree.

"In considering a challenge to the sufficiency of the evidence to support an enhancement, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence that is, - evidence that is reasonable, credible, and of solid value - from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] We presume every fact in support of the judgment the trier of fact could have reasonably deduced from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] 'A reviewing court neither reweighs evidence nor reevaluates a witness's credibility.' [Citation.]" (*People v. Albillar* (2010) 51 Cal.4th 47, 59-60; see also *People v. Ramon* (2009) 175 Cal.App.4th 843, 850.)

A gang enhancement requires proof of the existence of a criminal street gang and that the offense was "committed for the benefit of, at the direction of, or in

association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members" (§ 186.22, subd. (b)(4).) Expert testimony is admissible to prove these elements, including the motivation for a crime, and whether a crime was committed to benefit or promote a gang. (*People v. Albillar, supra*, 51 Cal.4th at p. 63; *People v. Garcia* (2007) 153 Cal.App.4th 1499, 1512.)

In challenging the sufficiency of the evidence underlying the gang benefit finding, appellant argues that the evidence showed only that he committed the murder for his personal benefit, to preserve his position as the BFL's shot caller, to obtain vengeance against Runner for taking his girlfriend, and/or out of anger over Runner claiming ownership of the .38 caliber revolver in appellant's possession. However, other evidence, particularly the gang expert testimony, established that the killing was for the benefit of the gang.

Gang expert Guerrero explained the reason that killing a fellow gang member can benefit a gang, under certain circumstances, as follows: "Given the situation with the shot caller and somebody trying to take over the gang itself, it starts off as an in-house situation. [¶] Now, with that in mind, if the second individual is trying to take over his rank, there's a lot of back-stabbing, a lot of talking, a lot of disrespecting. [¶] So what happens within the group is a lot of -- if one guy's talking bad about the shot caller, it's going to start a trend. He's going to lose credibility and leadership and he's going to move down within the ranks. That's how it's going to affect him and affect the in-house. [¶] Once it spreads out, if other gangs find out that they have problems in the in-house and can't even control their own people, it's a form of weakness and everybody else around them is going to try to take over the area or possibly take over them. [¶]. . . [¶] If [the shot caller is] willing to kill for the position, anybody else in that same gang B.F.L. is not going to step up to him."

Appellant selectively emphasizes the last sentence of the just-quoted passage in asserting that Guerrero's testimony was "notable for its careful and explicit limitation of the benefits to [appellant's] own personal in-house position." "Expert opinion that particular criminal conduct benefited a gang by enhancing its reputation for

viciousness can be sufficient to raise the inference that the conduct was 'committed for the benefit of . . . a[] criminal street gang' [Citations.]" (*People v. Albillar, supra*, 51 Cal.4th at p. 63.) Here, the jury could reasonably infer from the expert opinion and other evidence that it was in the interest of BFL to prevent other gangs from recognizing that BFL was weak and vulnerable because of an internal struggle for control. The gang expert opinions and the evidence underlying those opinions constitute substantial evidence supporting imposition of the gang enhancement.

Clerical Error

Finally, appellant asks that we direct the trial court to correct its minutes for the March 11, 2011 sentencing hearing by striking the following language: "All the fines/fees are to be collected by the Department of Corrections pursuant to Penal Code section 2085.5." Respondent agrees with appellant's claim that such language does not accurately reflect the court's oral pronouncement, and so do we.

DISPOSITION

The trial court is directed to correct the minutes of the March 11, 2011 sentencing hearing by striking the following language: "All the fines/fees are to be collected by the Department of Corrections pursuant to Penal Code section 2085.5." The trial court is further directed to transmit a certified copy of the corrected minutes to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Susan M. Speer, Judge
Superior Court County of Los Angeles

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