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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

D083332

Plaintiff and Respondent,

v.

(Super. Ct. No. SCD283258)

JESUS K. FARAJ,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of San Diego County, Theodore M. Weathers, Judge. Affirmed.

Ronda G. Norris, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Charles C. Ragland, Assistant Attorney General, Arlene A. Sevidal, Randall D. Einhorn and Andrew Mestman, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted Jesus K. Faraj of conspiracy to commit murder and of the first degree murder of Jimmy Khieu. In a subsequent bifurcated bench

trial, the trial court found true the special circumstance allegation that Faraj committed the murder while he was an active participant in a criminal street gang and the gang enhancement allegation he committed murder and conspiracy for the benefit of a criminal street gang.

Faraj contends the trial court erred when it admitted gang-related evidence during the jury trial instead of limiting such evidence to the bifurcated proceedings. We reject Faraj's contention for two reasons. First, his claim of error has been waived because it is vague and insufficiently developed. He also failed to address significant portions of the court's ruling. Second, overwhelming evidence of guilt—most of it consisting of digital text messages between Faraj, his alleged co-conspirators, and the victim—precludes a finding of prejudice from any of the gang evidence the court admitted at the jury trial.

PROCEDURAL HISTORY

The San Diego County District Attorney charged Faraj and three co-defendants—Peter Burgos, Steven Chavez, and Kristin Zarate—with the murder of Khieu (Pen. Code,¹ § 187, subd. (a); count 1) and conspiracy to commit murder (§ 182, subd. (a)(1); count 2), and, in addition, charged Faraj individually with making a criminal threat (§ 422; count 3). The District Attorney further alleged the special circumstance of murder while Faraj was an active participant in a criminal street gang (§ 190.2, subd. (a)(22)) and, as to the murder and conspiracy charges, that Faraj committed the offenses for the benefit of, in association with, or at the direction of a criminal street gang (§ 186.22, subd. (b)(1) and (5)), and a principal personally and intentionally discharged a firearm (§ 12022.53, subds. (d) and (e)(1)). Faraj was also alleged to have suffered two prior serious felony convictions (§§ 667,

1 Undesignated statutory references are to the Penal Code.

subd. (a)(1), 668, 1192.7, subd. (c)) and five prior strike convictions (§§ 667, subds. (b)–(i), 1170.12, 668).

In June 2023, Faraj filed a motion to bifurcate trial of the gang enhancement and gang special circumstance allegation. The trial court granted the motion in July, and a jury trial commenced on the murder, conspiracy, and criminal threat charges.

Before trial, the prosecution sought an in limine order allowing the presentation of expert testimony about Faraj’s alleged membership in a criminal street gang. Faraj objected and contended that all evidence of gang affiliation and gang activity was inadmissible at the jury trial on the substantive charges because trial of the gang enhancement and gang special circumstance had been bifurcated. The trial court granted the prosecution’s motion, in part, ruling that it would allow “some limited gang evidence to come in.”

In August 2023, the jury found Faraj guilty on all three charged counts. Two days later, after a bench trial, the court found true the special circumstance allegation, the gang and firearm enhancements, and several factors in aggravation that had also been charged.

In December 2023, the trial court sentenced Faraj on the murder count and associated enhancements to life without the possibility of parole, plus an indeterminate term of 50 years to life, plus a determinate term of 10 years in state prison. On the criminal threat count, the court imposed an additional and consecutive indeterminate term of 25 years to life plus a determinate term of five years. On the conspiracy count, the court imposed and stayed sentence pursuant to section 654.

STATEMENT OF FACTS

I.

Prosecution Case²

A. *Background*

In 2018, Khieu lived in mid-city San Diego. He supported his drug habit through financial fraud. He made fraudulent credit cards and gift cards. He ran a fraudulent check-cashing business with his friend, Yadira C. He was also involved in trafficking illegal firearms.

In the summer of 2018, Khieu's brother, Jonas O., became angry at Khieu because of the effect his behavior was having on their parents. Khieu would ask them for money, bring threatening people over to the house, and create a mess there. He also used their address to receive fraudulent credit cards. In August 2018, Jonas sent messages to Khieu threatening to beat him up and "kick his ass."

In November 2018, according to Jonas, he forgave Khieu after Khieu helped him when he was arrested for possession of marijuana and did not have his medical marijuana card with him. Jonas was still angry about how Khieu was treating their parents, however, and he sent a series of confrontational messages to Khieu in which he threatened to fight him if he saw him. For example, he wrote, "I don't want to see you. I don't want to feel

² The prosecution based a large part of its case on digital text messages. We quote from these communications extensively. The messages were exchanged between Faraj and his alleged co-conspirators, the victim, and several key witnesses. The messages are written using slang, deliberate misspellings, and nonstandard punctuation. They contain many typological errors. The individuals also refer to one another using nicknames and initials. When quoting from these messages, for the most part, we have substituted a first or last name for nicknames and initials, but we have not corrected the spelling or punctuation used in the original messages.

your presence.” He wrote, “I’ll catch you soon fuck boy, cuz you and I already [k]now I’m not the one to mess with. So whatever you’re fucking doing right now, you better think. Think.” As Jonas said in his text messages, he wrote these messages because he was angry and “one of the best ways to . . . resolve a situation is to just . . . get away from the person, take time to calm down. That is basically what I was doing. I needed some space.”

The last exchange of messages between Jonas and Khieu occurred on December 23, 2018, after Khieu stole money from their mother’s bank account. Jonas texted Khieu, “You’re stealing from your friends and family. It ain’t right, you bitch.” “The word on the street is you owe n[---]s a lot of money.” He continued, “Better be careful walking at night all alone, buddy.” Khieu responded, “Yes, so I don’t be doing lil shit like taking mom money.” Jonas replied, “I have already filed the police report.” He continued, “We want you gone. Leave us the fuck alone.”

According to Jonas, he wanted Khieu to stop bothering him and contacting him. He also wanted him to be careful. People had been telling Jonas that Khieu was in debt and “a lot of people want[ed] to hurt [him].”

B. *Khieu Begins Working for Faraj*

Sometime in December 2018, Khieu and Raya K. moved into Jesse P.’s residence on University Avenue. Khieu had met Jesse through “game rooms,” and he was a friend. Raya was Khieu’s “off-again and on-again” girlfriend. She was a member of the East Side San Diego gang (ESD) and she owed Faraj \$3,000.

Faraj was incarcerated in Centinela State Prison, but he had access to cell phones and the internet. He was also a member of ESD and one of its

“top leaders.”³ According to an investigation by the San Diego Police Department, Faraj directed drug sales from prison. He also trafficked firearms, and “tax[ed] and robb[ed] gambling dens.” He was further involved in supplying other prisoners with cell phones.

Khieu, who was not in a gang, told Faraj he would work for him and pay Raya’s debt. After Khieu assumed Raya’s debt, Faraj sent a message to David R., a subordinate gang member who was not in prison. The message instructed him that Raya should not be shot. Specifically, Faraj told David, “As for Raya. That’s on hold. Do not shoot her or her dude after all.”

On December 20, 2018, Faraj directed another subordinate ESD gang member, Jose R., to provide Khieu with a laptop “asap” so he could work on “jailbreaking” cell phones, which means unlocking them and rigging them so they could be used in prison. Referring to Khieu, Faraj wrote, “He’s our new \$. He obligated himself to the East. We own his ass now. He will be protected by us. In return, he handles business for The Tios that had their phones turned off here and put on the black list.”

C. *Khieu Underperforms and Fails To Pay His Debt*

Faraj quickly became unhappy with Khieu. Khieu failed to pay off Raya’s debt and failed to timely and successfully unlock all the phones Faraj had promised to deliver to other prisoners.

In late December 2018, Faraj called Jesse (Khieu’s friend and housemate) and made a deal with him. Jesse agreed to allow Burgos and Zarate (two of Faraj’s alleged co-conspirators) to live with him. Burgos was an ESD gang member. Zarate was an Old Town National City gang member.

³ The parties stipulated, “At the time of the alleged offense, Mr. Faraj was a member of East San Diego gang and was one of the top leaders in said organization.”

Zarate was also Faraj's girlfriend. In exchange, Faraj agreed Jesse's gambling business would no longer be taxed by ESD. Jesse understood that Burgos and Zarate would be watching and monitoring Khieu.

Burgos and Zarate moved in with Jesse toward the end of the year. Jesse observed they did in fact watch over Khieu. Once they arrived, Khieu was not free to leave, and Burgos watched him even when he went to the bathroom. Jesse also heard them discuss assaulting Khieu because of his debt to ESD. At some point, Jesse saw Burgos with a handgun that looked like "a Glock."

During the first three weeks of January 2019, Faraj regularly sent digital text messages complaining about Khieu and threatening him. For example, on January 2, Faraj told Zarate that Raya and Khieu "woke up the bad me." On January 6, he messaged Raya, "I'm going to tie [Khieu] up and butt fuck his ass with the mutha fucken shovel I plan to use for digging both your fkn graves with if he fkn falls off again. I am not playing." That same day, he messaged Khieu about his own deadlines and obligations delivering phones in prison, saying, "[Khieu] don't make me have you killed. My friend I am beyond stressed and my time limit for phones is 6am. Plz, know I am done being cool about things. I need this done." The next day, he messaged Zarate to remind her to watch Khieu carefully in case he tried to escape.

On January 7, 2019, Faraj sent a message to Jose about an escape attempt by Raya, who had been sent to Tijuana to make a drug run. He wrote, "Raya just got slapped around yesterday for her bs. Tonite she was sent to tj to bring jale⁴] back. The bitch went chasin after dude she knows to get away and was shut down by [Zarate]. Tried to lag so dude could catch up. Almost got them caught one with the Tj cops all for nada. Bitch did bring

4 "[J]ale" is slang for illegal narcotics.

back shit. Beat her lil ass my boy. [Khieu] will be scared shitless and you get all info. But Raya fears you. I need her smashed.”

A few hours later, Faraj exchanged messages with Khieu. He wrote, “Do you understand homie what you and Raya just put me through. I am done. I don’t have my fkn money. You both are done.” Khieu responded, “Again try hitting the device unlocked app without wifi. Fawk if there enough pressure already.” Faraj replied, “Fuck your pressure. I’m in prison mutha fucker where my word is my fkn bond and life.” Khieu answered, “FawFawk. I know but in doing with stuff to hurry the process faster. K if there enough pressure already.” Faraj then wrote, “5pm bro. I don’t have all my \$ you guys are done. I gives two fks. I don’t find you two I know where your peeps are at. Fuck being cool. I’m playing for keeps now. . . . I am serious. Come 5pm I don’t have 3 racks^[5] kiss your bitch good nye. Bye.”

A week later, on January 15, 2019, Faraj complained in another message that Khieu still owed him \$1,000 and three phones he activated “got turned off.” The next day Faraj wrote to Khieu, “You did recall me saying I know where your peeps live and ypur baby mama. And you do recall me saying wherever you think you can hide, I will find you. I’m going to first head to your parents. I’m sure I can get my monies worth in that garage right? Then off to babymonster and have her take a ride to meet up with those she burned. Plz, let them know it won’t matte. As I said before. I’m owed phones and \$. What’s more important to you. Taking care of what you owe me today or me getting it from your peeps my own way. You decide. I’d get at Raya ASAP and finish WTF you started with me. Try me and see what I’m about!”

5 A “rack” is slang for \$1,000.

D. *Khieu’s Business Partner Threatens Him But Then Forgives His Debt*

On January 20, 2019, Khieu’s friend and business partner, Yadira, messaged him about a debt he owed her. According to Yadira, Khieu had agreed to give her half the proceeds from a fraudulent check for \$12,000 or \$15,000, but he cashed it and kept all the money for himself. Yadira sent a few threatening messages to Khieu earlier in January. On January 20, she wrote, “You think you’re going to pay everyone but me. No, that not going to be the case. You’re foul as fuck, but I got your sorry ass fool.” She also wrote, “So when am I going to get anything from you? Baby Cee is getting out in a few days and then he’s going to be on your ass.” Baby Cee was a gang member Yadira knew (not an ESD member). Yadira had asked him to help her collect the debt.

In response, Khieu wrote, “Inno^[6] I’m gonna die tonight.” According to Yadira, after she received this message, she and Khieu spoke on the phone and he told her he was in trouble and “getting threatened” because “he had debts to pay.” Yadira, herself, was also in trouble. Like Khieu, she was doing a lot of drugs and had debts of her own. In her view, however, Khieu “had bigger problems.” Yadira forgave Khieu’s debt to her and texted him to confirm the debt had been forgiven in case anyone tried to collect it on her behalf.

E. *Khieu Foils a Plan for Someone to Shoot Him in the Knee*

On January 21, 2019, Faraj instructed Burgos in a digital text message, “I need [you to] pick up a nine,” which is a common street term for a 9-millimeter handgun. A few minutes later, he gave Burgos’s cell phone number to Chavez (another alleged co-conspirator). Chavez was also an ESD

6 “Inno” is slang for “I know.”

member. Faraj told Chavez to “drop that off.” A few minutes later, Faraj wrote again to Burgos, “I gave the homie your #. Make sure you pay attention. Don’t lose that strap.^[7] As soon as you get it, go to the pad and chill. Don’t leave. I need to handle biz tonite. Ty. Love you homie.”

A few hours later, Faraj told Burgos to never mind, “NM. Change of plans tanks to Raya. Once again my life is in limbo. Stupid bitch.”

Two days later, on January 23, 2019, Faraj messaged Raya and told her Khieu would be shot in the knee if he did not pay the debt he owed by 5:00 p.m. He wrote, “BTW . . . I’m shooting [Khieu] in the knee after 5pm,” and “One more thing. Tell him if he’s smart he better have \$ today. Becuz if he don’t I will shoot him.” Faraj messaged Chavez and told him, “Just make sure my homeboy [Burgos] keeps the 9.” He also messaged Burgos and told him, “Keep the 9 and make sure you collect my \$.” In another message to Burgos, he wrote, “You make sure I get 4 racks. Since I can’t get my phns on I want 4 racks and he still owes me \$1,500 . . . ty bro.”

Coincidentally, that same day, Yadira messaged Khieu to confirm she had forgiven his debt. She wrote, “Look all you have to say is that I’m done. I don’t care about the money. Not tripping on it. I told you that . . . you don’t owe me nothing. Okay. There is no debt between you and me no more. I don’t care about the money and is mine to do so nobody else’s. So I’m saying there is no debt. You show this to anybody and wants to Fing say something different you owe me nothing.” Khieu replied, “Dang Yadi for reals. You just made me cry. . . . You have no idea what I’m going through. I know you don’t believe me or not. This is the truth. I was think about ending myself because I knew this was not going to end fast enough you know. I just wadted

7 “Strap,” “piece,” and “toy” are all slang for a firearm.

everybody have some money and help cuz we all in doing bad you know.” Yadira replied, “Get your mind right. You’re hella smart. If you don’t ask the ones are around that care about you for help you can put yourself more and more and deeper in the hole. If you need anything let me know. I might be able to help you. You be surprised. But keep your head up.”

Yadira decided to allow Khieu to stay with her. She messaged him to let him know and offered to pay for a taxicab. She wrote, “You can come here. No one will be able to touch you here. You forget that I’m a wife of an East Sider. There’s also a first line soldier [living here].” In response Khieu wrote, “OMG they told me I have until 5:00 p.m. I did an electronic deposit and now three grand cash. WTF.” Yadira responded, “Why don’t you get a cab over here?” Khieu wrote, “Inno trying to get money but this is never gonna end.” Yadira responded, “Get a cab and I’ll pay for it.”

Burgos was friends with Yadira and he had also become friends with Khieu. According to Yadira, he brought Khieu to her apartment and let him go. He told Yadira he was supposed to shoot Khieu in the leg but could not bring himself to do it. Yadira allowed Khieu to stay with her. She did not tell Burgos that Khieu remained there after being dropped off.

The next day, Chavez texted Faraj to let him know he had retrieved the handgun. He wrote, “Ok I picked up the piece [Burgos] wasn’t there.”

Burgos told Faraj he did not shoot Khieu because he fell asleep. Faraj did not believe him, and he was upset that Burgos let Khieu get away. He complained to Chavez, “I have no one. I trusted my homeboy and he showed me his bitch ways.” Faraj also texted Raya, “Everyone is against me. They all turned on me. They didn’t do what I asked about [Khieu]. They let him go. Now I am gonna be hurt or taken down behind people I trusted. Nobody cares about what I’m going to go thru.” He also wrote, “I’m tired Raya. They

let [Khieu play] me again. My life is in limbo. I have to come up with \$1,500 and 3 oz of white before 8 am. Not gonna happen. I'm cooked. No more chances.”

The next day, January 25, 2019, Faraj sent Khieu a picture of the house where Khieu’s parents lived, and wrote, “Now you tell me if you think I ain’t getting paid.” He also threatened Burgos, writing, “I want you to know something. I will never forget how you let me down once again. [Burgos] if I was you I wouldn’t be around when I get out. You thinl I’m BSing. Test me. You allowed [Khieu] to wrong me. I would have never let that piece of shot wrong you. [Him] or no body else. Nothing you say or do will change how I feel about you.”

F. *Khieu Is Murdered*

Four days later, on January 29, 2019, Faraj began looking for Khieu. He wrote to Zarate, “The hood is covered . . . I want [Khieu’s] ass. So if [Burgos] can [look] around find me that piece of shit [Khieu].”⁸ Faraj later wrote to Burgos, “East up? My boy talk to me...are you ok?” He continued, “I need you. We have plans my boy remember? Get at me to let me know you’re okay plz.” Around this same time, Burgos messaged Yadira asking, “Where is [Khieu]?”

Faraj also messaged Khieu to accuse him of lying. He wrote, “[Khieu]. Listen to me good. I have no time for lies. All you’re doing is pissing me off.” He continued, “You stay lying. Bad biz amigo. I need to know you are trustworthy. But you lie.”

⁸ Faraj often asked Zarate, Chavez, and others to relay messages to Burgos because Burgos had a cell phone but no social media accounts to receive messages through such platforms.

The next day, January 30, 2019, Faraj sent a series of threatening messages to Khieu. He wrote, “You going to get at me or do I have to find you?” He sent Khieu a photograph of Raya—who had been “snatch[ed]” and beaten up by ESD gang members—and asked, “Do I have to go find you too?” He wrote, “You can’t hide my boy. I have eyes all over.” Referring to Raya, he continued, “She’s well. Doing her thang. Waiting to see if you’re a man of your word. But she’s in great health.” A few hours later, he wrote again, “One thing is bsing me. The other is acting like you got me and don’t even have enough respect to get at me at 8pm to tell me you ain’t got me. To me, that’s saying fuck you you ain’t shit but a lil bitch. All hood homie. Just remember. You made the stupid choice not to get at me. Or do I have to find you?”

Faraj also repeatedly asked Chavez to get him a gun, writing, “I really need a toy by 6 bro. I still have to take care of \$1,125 . . . I have to come thru tonite. Or I lose my phone. So plz get me a toy by or before 6. Plz.” A few hours later he wrote to Chavez again, “Talk to me bro. After tonite I have no phone. This is one of the main reasons I needed a strap to keep . . . it sucks having to ask you for shit bro.”

On January 31, 2019, Faraj followed up once again with Chavez, asking, “So tell me. You got a plan for me? I have 3 hrs.” Chavez responded, “For what exactly?” Faraj replied, “A piece.” Chavez responded, “I got you.”

The next day, on February 1, 2019, Faraj wrote to Khieu, “What about I found you.” A few hours later, Faraj explained, “One of my homegirls was walking around my hood and she swears she seen you. She knows the place also.” Faraj then asked Khieu if he had any money, and Khieu replied, “No.”

That evening, Faraj gave Jesse’s address to Chavez and Chavez sent an Uber to pick up Burgos. Faraj then instructed Zarate, “Have [Burgos] get at

me when he gets back. I need to be calculated. I need. Phone for him.” A few minutes later, Faraj wrote to Khieu, “The shells in my cannon are VERY REAL,” and, “I’m gonna and cool with both you and Rayas fkn lies. I’m gonna get paid by hook or by crook.” Khieu replied, “I’m serious.” Faraj responded, “I am TOO. DEAD SERIOUS.” Faraj later wrote to Zarate, “My strap and dope are not to be touched.”

During the message exchange with Faraj, Khieu arrived at his parents’ house and asked for \$600. Jonas was there. The brothers briefly spoke. They said “what’s up” to each other and Khieu congratulated Jonas on graduating from tech school. They did not otherwise interact.

On February 2, 2019, the day before Khieu’s murder, Faraj sent a picture of a handgun to David shortly after midnight. Around 5:00 a.m., he exchanged messages with Raya. He wrote, “I got [Khieu] tied up at the moment.” Raya responded, “Tied up as in literally or as in he’s busy.” Faraj replied, “Yep. I am having him torched.” A few minutes later, Raya relayed to Faraj that she was “[o]n the phone with [Zarate],” and “[s]he just beat up [Khieu].”

On February 3, 2019, the day of Khieu’s murder, Faraj sent Chavez eight photographs at 1:42 a.m. The pictures were of Khieu and documents that belonged to him, such as his bank account statement and criminal case records.⁹ Faraj wrote, “That’s [Khieu] right there. A lot of came up. Dude is spilling beans and [Raya’s] taken part in a few according to him.” Chavez replied, “I am on my way to her.” Faraj wrote, “Dude was playing stupid. Not sure of her exact involvement, but I do know she played a part in a few

⁹ At some point, Zarate went through Khieu’s backpack, removed the original documents, and gave them to Jesse. Jesse then photographed them and sent them to Faraj.

things. Including getting [Zarate]. Her idea.” He followed up, “Be mindful of her bro. Much love.”

Around the same time, Faraj messaged Zarate, “I need [Burgos] to have an activated phn. I can’t take any fk chances.” He also wrote, “Tomorrow let [Burgos] know I’m gonna have someone pick that up.”

When Zarate did not answer, Faraj wrote to Jesse, “East up with [Zarate]. Why isn’t she answering? Don’t want [Burgos] walking blind.” Jesse responded, “She past out big Dawg.” Faraj replied, “Dude wtf. The first thing I told her ass was I needed [Burgos] on deck and mobile and once again this girl lets me down what good is me sliding bomb to her for if all she does is pass out.” Faraj concluded his message by asking Jesse to have Burgos contact him. He wrote, “Ask [Burgos] to get at me plz.”

Later that morning, Khieu’s dead body was discovered in a drainage ditch in the Fox Canyon area of San Diego. A dirt walkway and small tunnel led to the ditch. The autopsy showed Khieu died from a bullet wound. The bullet entered through the top of his head and lodged in his shoulder. Several neighbors heard a noise consistent with a gunshot at around 9:00 or 9:30 a.m., and footage from one resident’s doorbell camera recorded the sound. San Diego police officers found a spent shell casing from a 9-millimeter cartridge five feet from Khieu’s body. A criminologist later determined the bullet removed from Khieu’s body had been fired from a Glock model pistol or a pistol with Glock-manufactured parts. Tests conducted by a criminologist showed no gun residue on Khieu’s hands.

That evening, around 7:30 p.m., Faraj messaged Chavez, “Trying to get all taken care of. You’ve helped me enough. I have to help myself to show my worth to you and OG.” Chavez responded with a voice mail message informing Faraj that a firearm had been returned to him earlier that day.

The next day, February 4, 2019, Raya sent Faraj a link to a news article titled, “Police investigate homicide in Fox Canyon neighborhood.” Shortly after, Burgos and Zarate retrieved their belongings and moved out of Jesse’s residence. A few weeks later, on February 25, 2019, Faraj texted Burgos that he was sorry for “involving [him] in some fucked up shit.”

G. *Investigation*

During the investigation of Khieu’s murder, the San Diego Police Department obtained search warrants and seized more than 60,000 pages of electronic data from cell phones and social media accounts. After speaking with his friends and family, police seized the data from Khieu’s Facebook account. On February 13, 2019, police interviewed Yadira and downloaded text and voicemail messages from her phone. On March 19, prison officials searched Faraj’s prison cell, found his cell phone, and turned it over to the police. Police detectives then seized data from cell phones and social media accounts belonging to Burgos, Chavez, Zarate, Raya, Jesse, and other significant witnesses.

On May 16, 2019, law enforcement conducted a *Perkins*¹⁰ operation, with Burgos as the target, at the San Diego County Jail. Two undercover officers and a confidential civilian informant, referred to as Operator 1, were placed in a cell with Burgos, who had been arrested for Khieu’s murder.¹¹ Before being placed in the cell, Operator 1 was told that a murder occurred, but he was given no further details about the crime. He was also given

10 *Illinois v. Perkins* (1990) 496 U.S. 292.

11 Over defense objection, the trial court protected Operator 1’s identity by allowing him to testify behind a set of panels so the jury could hear him but not see him.

Burgos's name only; he was not given Khieu's name or other suspected conspirators. He was paid \$1,500.

A few hours into the operation, according to Operator 1, Burgos whispered, "I shot him and nobody seen." Burgos also told Operator 1 that he killed the victim with one shot, no one witnessed the murder, and he left the scene through a tunnel to the street. Somewhat inconsistent with the gunshot sound heard by neighbors between 9:00 and 9:30 a.m., Operator 1 said that Burgos told him the murder happened at night.

In the recorded portion of the conversation, Burgos can be heard saying, "It was a Glock." He can also be heard mistakenly inferring the police had the wrong handgun, i.e., not the one he used to kill Khieu.¹² Burgos also told Operator 1 that he gave the handgun he used to "Despo," which is Chavez's nickname, and he was worried Chavez had snitched.

H. *Gang Evidence*

At trial, a police detective and a former police detective testified about gang culture in general and ESD in particular. They also provided context and explained some of the slang and other word usage in the digital-text-message evidence.

According to the detectives, ESD originated in the 1970s. It claims a territory in mid-city San Diego and had about 170 members in 2020. The gang is involved in a wide range of criminal activity in its territory including "[r]obberies, carjacking, kidnapping, any kind of assault you can think of, narcotics, fraud, auto theft, and grand theft." The gang "make[s] money off [its] turf," and "[a]ll those criminal activities are to benefit the gang, to protect their turf, to make their gang strong and renowned."

¹² Burgos incorrectly believed that Glock Inc. does not make 9-millimeter handguns, but the company does, in fact, manufacture them.

In 2019, Faraj was one of the top leaders of ESD, and Jose, David, and Burgos were “younger up-and-coming” gang members. Over defense objection, one of the detectives showed the jury pictures of Burgos’s ESD tattoo and Jose and David making ESD gang signs with their hands.

According to the detectives, gangs operate based on a system of loyalty and top-down bullying, which they refer to as “respect.” Gang members are required to “put in work” for the gang, and they are “harshly disciplined” if they disobey orders. The consequences for disobeying an order “can come in the form of taxing, financial taxing, a violent assault committed against that gang member who did not do what they were supposed to do, or that gang member being tasked with doing something else to make [things] right.”

In terms of the leadership structure, a “shot caller” is a gang member who has control of a neighborhood. This power is “bestowed” upon the shot caller “by higher gang members.” As a result, the shot caller in a neighborhood is responsible to other, more senior gang members. And if “things aren’t done right or by the rules,” the shot caller “can lose control of the[] neighborhood.” In addition, in gang culture, “when it comes to committing acts of violence against someone for a specific reason, that is something that needs to be okayed and blessed by the person who runs th[e] neighborhood.”

II.

Defense Case

Faraj did not testify or present other evidence. During closing argument, defense counsel argued there was insufficient evidence to prove Faraj directed Khieu’s murder because Faraj made empty threats on a regular basis without acting on them and was just “running his mouth.” He argued the language in Faraj’s messages was also no different than the

threatening language used by Jonas and Yadira, and it made no sense to kill Khieu because he was purportedly a “cash cow.”

DISCUSSION

Faraj contends the trial court abused its discretion at the jury trial on the murder, conspiracy, and criminal threat charges “by allowing the prosecutor to elicit the amount and type of gang evidence” that was ultimately admitted. Because the court bifurcated the gang allegations and the parties stipulated that Faraj was a member and top leader of ESD, he contends there should have been “minimal mention of gangs” at the jury trial pursuant to Evidence Code section 352. He contends “there is no clear-cut rule regarding the amount and type of evidence admissible to prove motive and intent or other relevant purposes where gang allegations have been bifurcated under Penal Code section 1109.” He asks us “to provide guiding factors for trial courts to determine how much and what kind of gang evidence is admissible in bifurcated cases,” and “what effect a defendant’s stipulations to gang membership and other gang evidence has on admissibility” in such cases.

We treat Faraj’s contention as waived for two reasons. First, as the appellant, it is Faraj’s responsibility to demonstrate error. However, his request for “guidance” on the admissibility of gang-related evidence in bifurcated trials is tied to no specific evidence or categories of evidence in the record. He provides no concrete framework for such guidance nor relevant legal authority to draw upon. He vaguely asserts the rules for assessing gang-related evidence under Evidence Code section 352 have changed since the Legislature enacted Penal Code section 1109, which is the statute that requires courts to bifurcate the trial of various gang enhancements upon request of the defendant. (See Stats. 2021, ch. 699, § 5, pp. 11–12.) But he

does not suggest how the rules have changed, making only conclusory statements, such as, “[c]ourts should be on . . . higher alert after the pushback on the admission of gang evidence following the [enactment of Penal Code section 1109],” and, “[t]he amount of gang evidence admitted in this bifurcated trial was troubling.”

We are not required “to develop the parties’ arguments or search the record for supporting evidence.” (*Meridian Financial Services, Inc. v. Phan* (2021) 67 Cal.App.5th 657, 684.) We “may instead treat arguments that are not developed or supported by adequate citations to the record as waived.” (*Ibid.*) “[O]ne cannot simply say the court erred, and leave it up to the appellate court to figure out why.” (*People v. JTH Tax, Inc.* (2013) 212 Cal.App.4th 1219, 1237.)

More problematic, Faraj has forfeited this claim by failing to disclose and discuss the trial court’s entire ruling. Before trial, the court addressed more than a dozen specific categories of gang-related evidence and, for each category, determined what would and would not be allowed into evidence. For example, after hearing argument, the court decided the jury could learn that “there is a gang called East San Diego, the number of members, the area that it controls,” as well as “information tying . . . Faraj into the East San Diego gang.” The court ruled that evidence about the expectation of “putting in work or doing work for the gang” was “fair game,” and that evidence regarding the culture of gang loyalty was also “fine.”

The trial court also ruled that it would allow the prosecution to present expert testimony about the primary activities of ESD, but the testimony would be sanitized by prohibiting mention of murders and attempted murders as “a little too close to this case.” The court tentatively ruled, contingent on the nature of Jesse’s testimony at trial, that the prosecution

would not be allowed to adduce testimony about gang retaliation against gang members and non-members for cooperating with law enforcement. And the court prohibited testimony about how members “go through the ranks of a gang” and obtain leadership.

Faraj omits all mention of the questions presented and resolved in these pre-trial proceedings. This despite the lengthy treatment of these issues by the People in their respondent’s brief. Faraj also fails to mention the origin of the stipulation that he was a member of ESD and a top leader in the gang. His trial counsel offered the stipulation to prevent the admission of photographs of Faraj’s ESD tattoos. “We disregard points not adequately briefed.” (*Noble v. Draper* (2008) 160 Cal.App.4th 1, 7, fn. 2.) Faraj has waived his argument on appeal for this second reason.

But even putting forfeiture aside, we would conclude any potential error was harmless. (*People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*).) Burgos admitted he killed Khieu: “I shot him and nobody seen.” He admitted he used a Glock handgun, which is the type of handgun that was used to kill Khieu. And he admitted he gave the handgun to Chavez after the murder. As we have recounted in great detail, the evidence was overwhelming that it was Faraj, not Jonas or Yadira, who ordered Burgos to commit the murder, and he did so because Khieu did not pay Raya’s debt and did not timely and successfully jailbreak cell phones for him. Most of this evidence is in writing and in Faraj’s own words.

In digital text message exchanges, Chavez agreed, three days before the murder, to get Faraj a firearm. The next day, he sent an Uber to pick up Burgos at Faraj’s request. Shortly after the Uber arrived, Faraj told Zarate to ask Burgos to contact him after he returned and instructed her, “My strap and dope is not to be touched.” That same day, Faraj messaged Khieu to say

“the shells in my cannon are VERY REAL” and he was “DEAD SERIOUS” about getting paid “by hook or by crook.”

The day before the murder, Faraj told Raya he had Khieu “tied up” and was “having him torched.” The day of the murder, he sent Chavez eight photos of Khieu and his personal documents. Just hours before Burgos shot Khieu in the head, Faraj texted Jesse and Zarate to try and get in contact with Burgos and make sure he had a phone.

After the murder, Chavez left a voice mail message for Faraj letting him know that a firearm had been returned to him. Raya sent him a link to a news article about the shooting. Faraj thanked Chavez for helping him “show [his] worth” to the gang’s leadership, and he apologized to Burgos for “involving [him] in some fucked up shit.”

Given these facts, there is no reasonable probability of a different result if gang evidence had been excluded from the jury trial. (*Watson, supra*, 46 Cal.2d at p. 836.) Indeed, Faraj himself concedes “the hours and hours and pages and pages of messages between the parties involved was more than sufficient to prove the elements of the offenses Faraj was charged with. There was no question as to intent that was not answered in that evidence.” Thus, even if not forfeited, we would reject Faraj’s contention of prejudicial error and affirm his convictions for murder, conspiracy, and making a criminal threat.

DISPOSITION

The judgment is affirmed.

DO, J.

WE CONCUR:

O'ROURKE, Acting P. J.

CASTILLO, J.