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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. VERNON ANDERSON, Defendant and Appellant.	A170207 (San Francisco City & County Super. Ct. No. SCN206013)

In 2011, a jury convicted Vernon Anderson of multiple offenses including first-degree felony murder, robbery, attempted robbery, and participation in a criminal street gang. In 2022, Anderson petitioned for resentencing under section 1172.6 of the Penal Code,[1] claiming he could not presently be convicted of murder due to changes in the law since his conviction. Appealing from the denial of his petition, Anderson raises two claims of error: first, the resentencing court's determination that he acted with reckless indifference for human life was improperly based on a factual finding that was inconsistent with a finding made by the jury at trial; and second, his counsel rendered ineffective assistance by failing to cite recent case law and secondary sources recognizing that young adults like Anderson (age 20 at the time of the offenses) lack full cognitive development to fully

[1] Further unspecified statutory references are to the Penal Code.

appreciate the risks entailed by their conduct. We affirm the denial of resentencing.[2]

FACTUAL AND PROCEDURAL BACKGROUND

We derive the following facts from the unpublished opinion and record in the prior appeal (*People v. Anderson* (Nov. 19, 2018, A136451) [nonpub. opn.]).

A. Charges

Anderson was charged by amended information with first-degree murder (§ 187; count one); participation in a criminal street gang (§ 186.22, subd. (a); count two); second-degree robbery (§ 212.5, subd. (c); counts three and four); attempted robbery (§§ 664, 212.5; counts five, six, seven); conspiracy to commit second-degree robbery (§ 182, subd. (a)(1); count eight); and discharging a firearm at an inhabited dwelling (§ 246; counts nine and ten).

With respect to count one, the information alleged that Anderson personally used a firearm (§ 12022.5, subd. (a)(1)), and that "a principal in said offense personally and intentionally discharged a firearm" causing death (§ 12022.53, subds. (d), (e)). With respect to the robbery and attempted robbery charges (counts three through seven), the information alleged that Anderson personally used a firearm (§§ 12022.5, subd. (a)(1), 12022.53, subd. (b)). With respect to counts one and three through seven, it was alleged that Anderson committed the offenses for the benefit of a criminal street gang within the meaning of section 186.22, subdivision (b)(1)(C). With respect to counts eight through ten, it was alleged that Anderson committed the

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[2] In conjunction with this appeal, Anderson filed a petition for writ of habeas corpus, *In re Vernon Anderson*, A173630. We have denied the petition by separate order filed this date.

offenses for the benefit of a criminal street gang within the meaning of section 186.22, subdivision (b)(1)(B).

B. Facts Established at Trial

On September 15, 2006, Zachary Roche-Balsam, the homicide victim, attended a party at 351 Victoria Street in San Francisco with a group of friends, including Keith, Bella, Yana, Ryan, Justin, and Daniel.[3] At some point, a group of 8 to 12 young men (including Anderson) came to the party, but no one seemed to know them. Around 12:30 a.m., the host of the party spoke to members of this group, and they left.

Sometime later, Anderson and his group began gathering across the street and seemed to be looking to start trouble. The men in the group asked a guest if he was from Sunnydale and what he was "claiming."

Around 2:00 a.m., the host announced the party was over and began turning out the lights. When the host added that the police would be arriving in about 10 minutes, someone from the group of men across the street said it would not take 10 minutes to "beat his ass." Daniel saw a Black man wearing a black beanie, sunglasses, and a camouflage jacket and holding a rifle or handgun. The man approached Justin and Keith and demanded they empty their pockets, but they told him they did not have anything.

At around the same time, Ryan, Bella, and Yana were waiting for their ride home. A man approached Bella and tugged at her purse. Another man approached, whom she described as short,[4] Black, with "little dreads," and

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[3] We use the witnesses' first names to respect their privacy. No disrespect is intended.

[4] Bella testified that she was five-feet-eight inches tall, and that the man who approached her with the gun was two to four inches shorter than her. Anderson is variously described in the record as being five-feet-two or five-feet-three inches tall.

wearing a big red and black jacket that was half zipped-up. Bella let go of the purse because she saw the man had a "long and skinny" gun "sticking out of his zipper." She later identified Anderson in court as the man with the gun.

As Yana was leaving, a young Black man yanked her purse from her shoulder, saying " 'Give me your shit.' " He ripped the strap and ran away with her purse.

Ryan saw a man from the group approach Bella and Yana and take their purses. At the same time, another man who was about 18 years old and six feet tall approached Ryan and demanded that he empty his pockets and surrender his wallet and his phone. The man displayed what Ryan believed was "a pellet gun" that "just looked fake." Ryan hit the man in the jaw, and the man fell to the ground. As the man got up, Ryan grabbed Bella and Yana and started to walk backwards, and the man pointed the gun at Ryan's chest and pulled the trigger twice. Ryan felt something hit his chest but was unharmed.[5]

Justin was standing outside with Keith when he noticed a group of approximately eight to ten Black males gathered in the middle of the street in front of the party house. One of the men pulled out a gun and ordered everyone outside the house to empty their pockets. One of the other men approached Justin and tried to go through his pockets. Justin told the man he did not have anything. Justin and the man began shoving each other, but the fight did not escalate. At the same time, Justin saw someone snatch Bella's purse.

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[5] As we shall explain, there was evidence that a BB gun may have been used in the robberies, but it was unclear whether the man who was struck by Ryan fired the BB gun at him.

Keith recalled seeing the group of men accost a guest and then huddle across the street. One of the men approached Keith and Justin and brandished a pistol near their heads. He demanded money, but moved on when they said they did not have any. A "[s]horter" man approached holding what appeared to be a "small rifle." He faced the house and said, " 'Everybody get on the ground' " before shooting the rifle. Keith saw the man fire "at least four or five" shots towards the party house in a sweeping motion. Keith later identified Anderson as the man who fired the rifle.

Roche-Balsam was on the sidewalk in front of 351 Victoria Street when he was fatally wounded by five bullets. Another bullet went through the front window of 351 Victoria Street, and two bullets hit a home at 367 Victoria Street. Another bullet blew out a tire in a car parked nearby.

During the police investigation, several witnesses identified Anderson as among the group of men from the party. In an interview with police, Anderson acknowledged having been at the party but claimed he stayed for only 30 minutes and learned the next day that someone had been shot after he left. The police searched Anderson's residence in El Sobrante and recovered a red and black 49ers jersey similar to the jacket worn by one of the robbers Bella described. The police also found two boxes of .22-caliber ammunition and a disassembled .22-caliber rifle.

At trial, firearms expert Mark Proia testified he examined 19 .22-caliber spent casings and undamaged bullets recovered from the crime scene and determined they were all fired from the same weapon. Proia also examined a number of damaged bullet fragments recovered from the crime scene but could not determine whether they were discharged from the weapon that discharged the other 19 rounds. Proia further determined the .22-caliber rifle recovered from Anderson's residence was not the weapon that

was fired on the night in question; however, one of the boxes of ammunition recovered from the El Sobrante home matched (by caliber and manufacturer) the 19 spent casings and undamaged bullets recovered at the scene.[6]

A police informant who was housed with Anderson in jail testified Anderson told him that he and his friends went to the party but that Anderson did not like it very much because it was for a bunch of white college students. One of Anderson's friends raised the idea of robbing the guests, and they went to Anderson's house and got a BB gun before deciding to obtain some real weapons. After obtaining a rifle and a second gun, they returned to the party and robbed some of the partygoers. When one of the boys fought back, two of Anderson's friends started shooting. Two, three, or four shots were fired, and Anderson's friend shot one of the partygoers.

San Francisco Police Officer Barry Parker, an expert on criminal street gangs in San Francisco's Lakeview district, testified that the Randolph Mob was a criminal street gang operating in the Lakeview district in September 2006, and that Anderson had been a member of the gang since 2003. Parker opined that the crimes in question were committed for the benefit of the Randolph Mob.

C. Jury Deliberations and Verdict

The jury was instructed on, among other things, aiding and abetting liability, murder under the natural and probable consequences doctrine, and the felony-murder rule.

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[6] Also recovered from the El Sobrante home was a box of .25-caliber rounds that matched (by caliber and manufacturer) two live rounds recovered at the crime scene. As Proia explained, a .22-caliber semiautomatic weapon cannot fire .25-caliber auto rounds and the two .25-caliber rounds recovered at the crime scene each had "an indented primer," indicating that a firing pin came into contact with them, possibly when they were ejected from the chamber without being fired.

During deliberations, the jury asked two questions with respect to counts nine and ten (firing at an inhabited dwelling): first, whether it was required to find that Anderson (and not a coparticipant) shot at the dwellings in order to convict Anderson; and second, assuming a coparticipant fired at an inhabited dwelling, whether the prosecution was required to prove either or both that (1) Anderson knew the coparticipant intended to commit this crime and (2) this crime was a natural and probable consequence of the robbery and attempted robbery. As to the first question, the court responded that the jury did not have to conclude Anderson was the shooter. As to the second question, the court responded that the prosecution was only required to prove either of the two predicate facts, but also that the coparticipant shot at the inhabited dwelling willfully and maliciously.

The jury found Anderson guilty as charged. Each of the verdict forms for murder, robbery, and attempted robbery contained the following language specific to the vicarious liability firearm enhancement under section 12022.53, subdivision (d) and (e):

"**SPECIAL FINDING 12022.53 PC (d) and (e)** [¶] We, the Jury, having found defendant, Vernon Anderson, guilty of _____, [a]nd having further found TRUE the allegation that he committed that offense 'for the benefit of a criminal street gang,' do now find the allegation under section 12022.53(d) and (e) of the Penal Code that _____ did personally and intentionally discharge[] a firearm, which proximately caused death to a person other than an accomplice, to wit: Zachary Roche-Balsam in commission of the above offense, to be _____." Below the first blank, the jury was given the choices of "Robbery OR Attempted Robbery," and they wrote "ROBBERY" for the murder and robbery verdict forms, and "ATTEMPTED ROBBERY" for the attempted robbery verdict forms. Below

the second blank were the words "Vernon Anderson OR a Principal," and the jurors wrote "A PRINCIPAL." Below the third blank were the words "NOT TRUE/TRUE," and they wrote "TRUE."

In 2018, this court affirmed the judgment (*People v. Anderson* (Nov. 19, 2018, A136451) [nonpub. opn.]), but in 2020, the California Supreme Court reversed, concluding the trial court did not properly impose the vicarious firearm discharge enhancements (§ 12022.53, subds. (d) and (e)) on the robbery and attempted robbery counts (three through seven) because the enhancement allegations were never contained in an accusatory pleading. (*People v. Anderson* (2020) 9 Cal.5th 946, 950 (*Anderson*).) *Anderson* did not impact the vicarious firearm discharge enhancement on the felony-murder conviction because the enhancement allegation was included in the accusatory pleading on this count.

In 2022, Anderson filed a section 1172.6 petition alleging his murder conviction under count one was based on a now abrogated version of the felony-murder rule. The prosecutor conceded the need for an evidentiary hearing, which took place on March 11, 2024.

In denying the petition, the resentencing court made several findings and remarks, which we now summarize. The court first found it had not been proved beyond a reasonable doubt that Anderson was the actual killer of Roche-Balsam. The court then turned to whether it had been proved beyond a reasonable doubt that Anderson was a major participant in the felonies and acted with reckless indifference to human life.

On the major participant question, the resentencing court noted that Anderson was involved in planning the robberies; that he retrieved a BB gun to aid in the offense; and that he engaged in further discussions with his coconspirators to obtain "heavier" or "more lethal" weapons, such as a .22-

caliber or sawed-off shotgun. Although the court acknowledged it was uncertain "how many guns were used," the court found it clear that Anderson "played a role in getting the weapons, one of which ultimately fired the fatal bullet." The court further observed that, beyond the 19 casings and bullets attributed to the murder weapon, there were "other casings that were never identified," and because the crime scene was an outdoor area, there could have been "even more" unrecovered casings given the number of shots the witnesses heard and the number of reported firearms.

The resentencing court further concluded that because Anderson "was aware this was going to be a robbery" involving weapons against "a large group of people," he could not have been surprised by the eventual use of a weapon. Since there were many young partygoers using alcohol late at night, the court found it was "not the kind of robbery that one would associate with low danger." Rather, it was a situation that would likely involve "a high degree of danger," "pushback," and "potential for confusion," making it "a very different situation" from a "garden-variety robbery."

Based on the evidence that Anderson facilitated and engaged in the robberies, the resentencing court found that Anderson "was an active participant in these events; he was not a passive participant." The court then remarked, "There's evidence that he was armed and fired the rifle at the scene and at the house. There's evidence that he robbed, at gunpoint, multiple victims. There's evidence that he ordered multiple victims to the ground. . . . Generally, there's evidence that Mr. Anderson contributed to the chaos and the general lawlessness that resulted and contributed to the . . . shooting and then the death of the victim here." Additionally, the court noted there was no evidence Anderson "tried to intervene and calm things down here, and to remind people, for example, that this was only a plan for a

robbery, that . . . none of this force was going to be used." Nor was there evidence that he attempted to help the victim after lethal force was used.

The resentencing court then considered "whether or not Mr. Anderson acted with reckless indifference to human life." The court answered this in the affirmative because Anderson "participated with others in obtaining weapons that could kill"; he was aware that at least one real firearm would be used during the commission of the underlying felony; he was "at the scene and was participating" in the robberies and attempted robberies; he knew from the number of people at the party that there was a likelihood of the use of force; he did not try to stop anyone from firing or to help the decedent after he was shot; and the robbery was not "rash" or "impulsive," but "took some planning," and "went on for some time"

The resentencing court emphasized it had "certainly" considered Anderson's youth, i.e., that "[h]e was just about three months short of his 21st birthday." Stating it was "well aware of the research on the impulsivity of youth and a lack of reflection, the lack of full development, of cognitive issues," the court explained there was no evidence suggesting "that Mr. Anderson was not well aware, at 21, how dangerous a situation this is. Again, this isn't someone who's you know, hoodwinked into driving the car for purposes that are not nefarious" or "hoodwinked into participating in something that could be consistent with innocent activity or was assured that no lethal event would occur."

Finally, the resentencing court cited *People v. Bradley* (2021) 65 Cal.App.5th 1022, a decision indicating it could find no published case in California where a defendant was armed with a weapon and wielded the weapon during a robbery and was present during all the events, but was not found to be acting in reckless indifference. (See *Bradley*, at pp. 1035–1036.)

Finding the prosecution had proved beyond a reasonable doubt that Anderson was guilty of murder under current California law, the resentencing court denied the petition for resentencing.

Anderson timely appealed. He also filed a petition for writ of habeas corpus (case no. A173630) claiming ineffective assistance of counsel. We deferred consideration of the habeas corpus petition pending our consideration of this appeal.

DISCUSSION

A. Governing Law

Senate Bill No. 1437 ("Senate Bill 1437") narrowed the scope of the felony murder rule by amending sections 188 and 189 as they pertain to participants in the perpetration or attempted perpetration of certain felonies (including robbery) who were not the actual killer. (*People v. Martinez* (2019) 31 Cal.App.5th 719, 723.) Under section 189, subdivision (e)(2) and (3), such participants cannot be convicted of felony murder unless they aided in the murder with the intent to kill or were "a major participant in the underlying felony and acted with reckless indifference to human life, as described in subdivision (d) of Section 190.2 [the special circumstance statute for felony murder]."

Senate Bill 1437 also added section 1170.95 (since renumbered section 1172.6), which allows defendants to petition to vacate their murder convictions and seek resentencing on remaining counts by showing they "could not presently be convicted of murder or attempted murder because of changes to Section 188 or 189 made effective January 1, 2019." (§ 1172.6, subd. (a)(3); *People v. Douglas* (2020) 56 Cal.App.5th 1, 7.)

At the evidentiary hearing on a section 1172.6 petition, "the burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that

the petitioner is guilty of murder or attempted murder under California law as amended by the changes to Section 188 or 189 made effective January 1, 2019." (§ 1172.6, subd. (d)(3).) Both sides may offer "new or additional" evidence at the evidentiary hearing. (§ 1172.6, subd. (d)(3).) If the resentencing court denies a section 1172.6 petition following an evidentiary hearing, we review the court's factual findings for substantial evidence and the application of those facts to the statute de novo. (*People v. Arnold* (2023) 93 Cal.App.5th 376, 383 (*Arnold*).)

"Reckless indifference to human life is 'implicit in knowingly engaging in criminal activities known to carry a grave risk of death.' [Citation.] Examples include 'the person who tortures another not caring whether the victim lives or dies, or the robber who shoots someone in the course of the robbery, utterly indifferent to the fact that the desire to rob may have the unintended consequence of killing the victim as well as taking the victim's property.' [Citation.] Reckless indifference 'encompasses a willingness to kill (or to assist another in killing) to achieve a distinct aim, even if the defendant does not specifically desire that death as the outcome of his actions.' " (*In re Scoggins* (2020) 9 Cal.5th 667, 676–677 (*Scoggins*).)

Reckless indifference has subjective and objective elements. For the subjective element, " '[t]he defendant must be aware of and willingly involved in the violent manner in which the particular offense is committed,' and he or she must consciously disregard 'the significant risk of death his or her actions create.' [Citation.] As to the objective element, ' "[t]he risk [of death] must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him [or her], its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation." ' [Citations.] 'Awareness of no

more than the foreseeable risk of death inherent in any [violent felony] is insufficient' to establish reckless indifference to human life; 'only knowingly creating a "grave risk of death" ' satisfies the statutory requirement. [Citation.] Notably, 'the fact a participant [or planner of] an armed robbery could anticipate lethal force might be used' is not sufficient to establish reckless indifference to human life." (*Scoggins*, *supra*, 9 Cal.5th at p. 677.)

"The mere fact of a defendant's awareness that a gun will be used in the felony is not sufficient to establish reckless indifference to human life." (*People v. Clark* (2016) 63 Cal.4th 522, 618 (*Clark*), citing *People v. Banks* (2015) 61 Cal.4th 788, 809.) However, "[a] defendant's *use* of a firearm, even if the defendant does not kill the victim or the evidence does not establish which armed robber killed the victim, can be significant to the analysis of reckless indifference to human life." (*Clark*, at p. 618.)

Courts must consider "the totality of the circumstances to determine whether [a defendant] acted with reckless indifference to human life. Relevant factors include: Did the defendant use or know that a gun would be used during the felony? How many weapons were ultimately used? Was the defendant physically present at the crime? Did he or she have the opportunity to restrain the crime or aid the victim? What was the duration of the interaction between the perpetrators of the felony and the victims? What was the defendant's knowledge of his or her confederate's propensity for violence or likelihood of using lethal force? What efforts did the defendant make to minimize the risks of violence during the felony? [Citation.] ' "[N]o one of these considerations is necessary, nor is any one of them necessarily sufficient." ' " (*Scoggins*, *supra*, 9 Cal.5th at p. 677.)

B. Inconsistent Findings Claim

Anderson contends the resentencing court's determination of reckless indifference was improperly based on a factual finding that was inconsistent with a prior finding of the jury. Specifically, Anderson takes issue with the court's remark that "[t]here's evidence that [Anderson] . . . fired the rifle at the scene and at the house." Anderson insists this statement was inconsistent with the jury's finding at trial that the prosecution had not proved beyond a reasonable doubt that he was the gunman who fired upon 351 and 367 Victoria Street. Relying on *People v. Cooper* (2022) 77 Cal.App.5th 393 (*Cooper*), Anderson argues the resentencing court was not permitted to make a finding that "turn[ed] the trial jury's contrary findings as to who was the one shooter in this case into its opposite." This claim of error raises an issue of law that we review de novo. (*People v. Lopez-Barraza* (2025) 110 Cal.App.5th 1227, 1240 (*Lopez-Barraza*).)

In *Cooper*, the defendant was convicted of first-degree murder and kidnapping in a scheme involving two coparticipants. (*Cooper*, *supra*, 77 Cal.App.5th at pp. 400–401.) The jury found true the allegation that a principal was armed with a firearm during both offenses, but it acquitted the defendant of the charge of being a felon in possession of a firearm. (*Id.* at p. 397.) At the section 1172.6 hearing, the parties did not submit any new evidence, and the trial court, in reliance on the trial transcripts and the appellate opinion, concluded the defendant was a major participant who acted with reckless indifference to human life "based in part on its belief that [the defendant] possessed and fired a gun." (*Id.* at p. 398.)

In reversing the denial of resentencing, *Cooper* concluded "a trial court cannot deny relief in a section [1172.6] proceeding based on findings that are inconsistent with a previous acquittal when no evidence other than that

introduced at trial is presented." (*Cooper*, *supra*, 77 Cal.App.5th at p. 398.) In so doing, *Cooper* expressly did not rely on the doctrine of collateral estoppel, but on analogous case law under the Three Strikes Reform Act of 2012 (Three Strikes law) holding that "a trial court could not conclude a defendant was ineligible for resentencing . . . by relying on factual determinations about the defendant's gun use that 'turn[ed] acquittals and not-true enhancement findings [at trial] into their opposites.' " (*Cooper*, at pp. 413–417.)

The People contend *Cooper* was wrongly decided and should not be followed. In the People's view, *Cooper*'s reasoning based on the Three Strikes law was flawed because that statutory scheme "necessarily looks backwards" (*People v. Frierson* (2017) 4 Cal.5th 225, 238) on a closed record to determine whether a prior conviction continues to qualify as a strike, while section 1172.6 permits the parties to offer new evidence and theories to meet their respective burdens (*People v. Vargas* (2022) 84 Cal.App.5th 943, 952; *People v. Schell* (2022) 84 Cal.App.5th 437, 444–445 (*Schell*)). The People also maintain that *Cooper* clashes with longstanding Supreme Court authority that a jury's not-true finding on a firearm use allegation has no issue-preclusive effect on the retrial of a murder charge where the not-true finding is not an ultimate fact necessary to find guilt for murder. (*People v. Santamaria* (1994) 8 Cal.4th 903 (*Santamaria*).)

We need not wade into this appellate debate.[7] Assuming *Cooper* was correctly decided, its rule that a resentencing court's findings cannot be

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[7] We note *Cooper* has been cited with approval by several appellate courts. (See *Lopez-Barraza*, *supra*, 110 Cal.App.5th at p. 1243 [finding no disagreement with *Cooper* and concluding resentencing court is precluded from deciding new issues based on factual findings "that are inconsistent with facts *necessarily* found by the jury"]; *People v. Henley* (2022) 85

inconsistent with a prior acquittal or a not-true finding is inapplicable for the simple reason that this case involves neither of these jury determinations. Rather, the jury found Anderson *guilty* as charged and found *true* both the personal firearm use enhancement allegation (§ 12022.5, subd. (a)(1)) and the vicarious firearm discharge enhancement allegation (§ 12022.53, subds. (d) and (e)).

Anderson nonetheless emphasizes that the jury asked questions as to the applicability of vicarious liability on counts nine and ten, and that its verdict forms identified "a principal" rather than "Anderson" as the person who personally and intentionally discharged a firearm that proximately caused death. In Anderson's view, *Cooper* prohibits a resentencing court from making findings that are inconsistent with the jury's finding of "evidentiary shortcomings" in the prosecution's theory that Anderson was the person who fired at the dwellings. We are not persuaded.

The inconsistency at the root of *Cooper* arises when acquittals and not-true enhancement findings are effectively turned " 'into their opposites' " by a finding of the resentencing court. (*Cooper*, *supra*, 77 Cal.App.5th at p. 413.) Here, the jury's finding at trial that "a principal" fired the shots that killed the victim would not be turned into its opposite by a court finding that Anderson discharged a firearm during the course of the underlying felonies. Both findings can be true. As recounted earlier, there was evidence at trial

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Cal.App.5th 1003 [following *Cooper*]; *Arnold*, *supra*, 93 Cal.App.5th at pp. 385–387 [aligning with *Cooper* in concluding that resentencing court erred in failing to give preclusive effect to jury's not-true finding on knife-use enhancement].) In *People v. Hart* (2025) 113 Cal.App.5th 1099, the court distinguished *Cooper* and relied on *Santamaria* to conclude a jury's not-true finding on a personal firearm use allegation did not preclude the resentencing court from relying on an actual killer theory in determining guilt for felony murder. (*Hart*, at pp. 1114–1115.)

that multiple firearms were involved in the robberies and attempted robberies, including a .22-caliber rifle and a .25-caliber semiautomatic firearm. Furthermore, Bella testified that Anderson was carrying a "skinny" firearm that the prosecutor argued was similar to the .22-caliber rifle found at his El Sobrante home, but which was not the murder weapon. Thus, the jury's identification of "a principal" in its verdict forms did not rule out that both Anderson and another person fired shots during the robberies.

That the jury may have perceived shortcomings in the prosecution's case is not a finding of the jury in any practical sense, and it would be speculative to go further and assume the jury wrote "a principal" because it necessarily found Anderson innocent of the allegation of harmful discharge of a firearm. (See *People v. Wilson* (2023) 90 Cal.App.5th 903, 917 (*Wilson*) [distinguishing *Cooper* where "jury was *unable* to reach a verdict on allegations that Wilson personally used and discharged a firearm in the commission of the crimes"]; cf. *Lopez-Barraza*, *supra*, 110 Cal.App.5th at pp. 1247–1248 [resentencing court precluded from making findings inconsistent with "facts *necessarily* found by the jury"].) At bottom, Anderson's "shortcomings" theory does not convince us that the resentencing court erred in its findings. (See *Wilson*, at p. 917 [question on resentencing is "whether the evidence, as of the time of the resentencing hearing, established murder as now defined and beyond a reasonable doubt; it does not require the trial court to speculate how the . . . jury might have ultimately decided the case."].)

Anderson insists the resentencing court was precluded from finding there were multiple shooters because the prosecution's theory of the case, as reflected in its opening and closing arguments at trial, was that "there was but one shooter and one volley." But a resentencing court is not precluded

from finding guilt on a theory that was not previously presented at trial. (*Schell*, *supra*, 84 Cal.App.5th at pp. 444–445.) More to the point, the prosecutor's arguments did not foreclose a finding of multiple shooters. Reasonably construed, the prosecutor's references to "[o]ne of the armed gang members" who "fired 19 shots" and "one of those gang members" who "decided to shoot 19 shots" refer to the trial evidence that 19 specific casings and bullets recovered from the crime scene were determined to have been fired from the same weapon, presumably by one person. But that does not foreclose a finding that other weapons were fired. As discussed, the trial record reflects that, apart from the 19 spent casings and undamaged bullets that were traced to the murder weapon, there were other damaged bullet fragments recovered at the scene, and one witness (Keith) testified that Anderson fired "at least four or five" shots at the house (even if he was not proved to have shot at the victim). As such, the resentencing court's finding of multiple shooters was not so inconsistent with either the prosecution's arguments or the jury's findings at trial that it implicated the holding of *Cooper*.

C. Ineffective Assistance of Counsel Claim

Anderson argues his counsel rendered ineffective assistance by failing to cite recent case law and secondary sources recognizing that young adults, like minors, lack full cognitive development to fully appreciate the risks entailed by their conduct, which is relevant to determining whether they acted with reckless disregard for human life. Though acknowledging his counsel addressed the youth factor in her papers, Anderson contends that counsel's authorities involved only minor offenders and that she should have cited more recent authorities involving young adults (see, e.g., *People v. Pittman* (2023) 96 Cal.App.5th 400, 416 [21 years old at time of offense];

People v. Jones (2022) 86 Cal.App.5th 1076, 1093 [20 years old at time of offense]), as well as recent scientific findings on young adult brain development. We see no basis for relief.

"In order to demonstrate ineffective assistance, a defendant must first show counsel's performance was deficient because the representation fell below an objective standard of reasonableness under prevailing professional norms. [Citation.] Second, [defendant] must show prejudice flowing from counsel's performance or lack thereof. Prejudice is shown when there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." (*People v. Williams* (1997) 16 Cal.4th 153, 214–215 (*Williams*), citing *Strickland v. Washington* (1984) 466 U.S. 668, 687–688.)

On appeal, we presume "counsel's performance fell within the wide range of professional competence and that counsel's actions and inactions can be explained as a matter of sound trial strategy." (*People v. Gamache* (2010) 48 Cal.4th 347, 391.) "If the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged, an appellate claim of ineffective assistance of counsel must be rejected unless counsel was asked for an explanation and failed to provide one, or there simply could be no satisfactory explanation." (*Ibid.*)

Here, the record sheds no light on the reasons for the challenged omissions. As Anderson acknowledges, his counsel's resentencing brief cited *In re Moore* (2022) 68 Cal.App.5th 434, *People v. Keel* (2022) 84 Cal.App.5th 546, and *People v. Ramirez* (2021) 71 Cal.App.5th 970 and expressly argued Anderson's youth was an important consideration on whether he acted with

reckless indifference to human life.[8] While it is true the above cases involved minors, not young adults, we are not persuaded that Anderson has demonstrated objectively deficient performance.

In *People v. Huricks* (1995) 32 Cal.App.4th 1201, the defendant argued his trial counsel was ineffective because he "failed to prepare moving papers containing anything other than broad generalities and legal conclusions in his declaration and supporting points and authorities." (*Id.* at p. 1211.) The appellate court found no deficient performance, as "a review of the pertinent documents discloses that the language used, though expressed in generic terms, sufficed to raise the relevant issues and put the parties on notice as to the thrust of the motion." (*Ibid.*) The same can be said here. The cases cited by counsel sufficiently raised the issue of Anderson's age as a relevant factor in evaluating whether he acted with reckless indifference to human life.

Anderson also fails to demonstrate prejudice. On appeal, we must presume the resentencing court considered all information contained in the record. (Evid. Code, § 664; *People v. Myers* (1999) 69 Cal.App.4th 305, 310.) And absent an affirmative showing to the contrary, we also must presume the court properly applied the law and all relevant factors. *(People v. Carmony* (2004) 33 Cal.4th 367, 378; Cal. Rules of Court, rule 4.409.)

Notwithstanding counsel's failure to cite decisional authorities and secondary sources specifically addressing the cognitive development of young adults, the resentencing court expressly noted it had "considered Mr.

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[8] Anderson also claims his counsel "did not address the issue at argument," but the reporter's transcript of the section 1172.6 hearing reflects otherwise. Highlighting that Anderson was "a young man, 20 years old," counsel argued the court should consider such circumstance along with Anderson's "limited criminal history" when considering whether or not he "had knowledge of the dangerousness and the . . . grave risks of death."

Anderson's youth" and was "well aware of the research on the impulsivity of youth and a lack of reflection, the lack of full development, of cognitive issues." Nothing in the record suggests the court disregarded such research because Anderson was not a minor. Indeed, the court indicated it "certainly consider[ed]" that Anderson "was just about three months short of his 21st birthday," but explained that notwithstanding his youth, the trial evidence demonstrated he was aware of the dangerousness of the situation and was not deceived or pressured into participating in the underlying offenses. Notably, Anderson fails to provide any specific support from the record for the suggestion that his impulsivity or vulnerability to peer pressure lessened his culpability for this murder. (*People v. Oliver* (2023) 90 Cal.App.5th 466, 490.) On this record, we are not persuaded that but for counsel's purported errors, the result of the proceeding would have been different. (*Williams*, *supra*, 16 Cal.4th at pp. 214–215.)

DISPOSITION

The order denying the petition for resentencing is affirmed.

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Fujisaki, J.

WE CONCUR:

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Tucher, P. J.

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Petrou, J.

People v. Anderson (A170207)