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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.

ANDREW ANTHONY LYNCH,

Defendant and Appellant.

A129440

(Sonoma County
Super. Ct. No. SCR526473)

A jury convicted defendant Andrew Anthony Lynch of assault with a deadly weapon (Pen. Code,¹ § 245, subd. (a)(2)) (a lesser included offense of attempted murder with which he was charged), shooting at an occupied motor vehicle (§ 246), and active participation in a street gang (§ 186.22, subd. (a)). The jury also found to be true several gang and firearm allegations, including the allegation that defendant's intentional discharge of a firearm at a motor vehicle caused great bodily injury. (§ 12022.53, subd. (d).)

Defendant contends there is insufficient evidence to support his conviction for shooting *at* an occupied vehicle because defendant fired the handgun while standing at the door of a parked vehicle with the gun extended *inside* the vehicle. He also contends the victim's gunshot wounds do not constitute great bodily injury. We reject both contentions and shall affirm the judgment.

¹ All further section references are to the Penal Code.

STATEMENT OF FACTS

There was evidence at trial of the following. Defendant was a Norteño street gang member. On the night of December 23, 2007, defendant was drinking beer and “hanging out” at his apartment with 15 to 20 people, many of them Norteños. Defendant told his girlfriend that he was “going to do business” and left the apartment with two other Norteños, Dominic Andino and Misael Gutierrez. The men, armed with a pistol and shotgun, drove for about 30 minutes looking for rival Sureño gang members. They went to Sureño territory and saw a parked car occupied by Latinos. Assuming the car occupants to be Sureños, defendant and Gutierrez approached the parked car as Andino waited in the Norteños’s car with the head lights extinguished and the engine running.

The parked car was occupied by a driver and two passengers, one in the front seat and one in the back. Enrique Lopez was the driver. Defendant went to the driver’s side of the vehicle as Gutierrez stood on the passenger’s side with a shotgun. Defendant tried to open the driver’s door and when he could not, ordered Lopez to open it. Lopez rolled down the window and defendant asked him if he was a Sureño. Defendant again tried opening the door and when it did not open, pointed a pistol at Lopez. Lopez unlocked the doors on both sides of the car.

Defendant opened the driver’s door and pointed the pistol at Lopez and Gutierrez opened the passenger’s door and pointed the shotgun at the passenger. Defendant demanded that Lopez lift his shirt and show defendant Lopez’s belt. Lopez said, “no, I don’t [got] nothing.” Gutierrez, referring to the passenger, asked defendant if he should “blow this mother fucker’s head off.” Defendant, while standing outside the car, then fired the pistol three or four times at Lopez, seated about a foot away inside the car.

Lopez was struck by two bullets. One bullet struck him in the shoulder and went out the back and another struck him in the abdomen and remained lodged there. Lopez was taken to the hospital where he had x-rays and other tests performed. The physician who treated Lopez decided not to remove the bullet lodged in the abdomen because he felt surgery can cause more damage than leaving a bullet in place. Lopez stayed

overnight at the hospital for observation and was released the next day with a prescription for pain medication.

Following the return of the guilty verdicts,² the court sentenced defendant to a prison term of 30 years to life. Defendant filed a timely notice of appeal.

DISCUSSION

Defendant was convicted of violating section 246, which provides, as relevant here: “Any person who shall maliciously and willfully discharge a firearm at an . . . occupied motor vehicle” is guilty of a crime. The evidence here establishes that defendant was standing outside a parked car with open doors when he shot the driver who was seated about a foot away inside the car. Defendant argues that the evidence suggests the gun was inside “the periphery of the vehicle” when he fired the gun and that he, therefore, did not discharge a firearm *at* a vehicle within the meaning of section 246. Defendant contends that it is the location of the firearm, not the shooter, that is dispositive, so that section 246 does not apply if the firearm extends into the vehicle.

The contention was recently rejected by the California Supreme Court in an opinion issued after defendant filed his opening brief on appeal. (*People v. Manzo* (2012) 53 Cal.4th 880.) The defendant in *Manzo* was standing outside a parked car when he reached his arm into a vehicle and shot a passenger. (*Id.* p. 885.) Our high court affirmed the conviction, finding that “the Legislature intended section 246 to apply to a person standing outside an occupied motor vehicle and shooting into it, even if the gun has crossed the plane of the vehicle.” (*Id.* at p. 883.) Defendant here, who was standing outside the vehicle when he fired shots into it, was properly convicted of violating section 246.

The evidence also supports the jury’s finding that defendant’s discharge of a firearm at a motor vehicle caused great bodily injury. (§ 12022.53, subd. (d).) Great bodily injury, within the meaning of the statute, “means a significant or substantial

² The jury found Gutierrez not guilty of the crimes with which he was charged.

physical injury.” (*Ibid.*, § 12022.7, subd. (f).) Lopez’s injuries meet this standard. Lopez was struck by two bullets, one that passed through his shoulder and another that remained lodged in his abdomen. Great bodily injury findings have been upheld where the victim suffered gunshot wounds similar to those suffered by Lopez. (*People v. Wolcott* (1983) 34 Cal.3d 92, 106-108; *People v. Mendias* (1993) 17 Cal.App.4th 195, 205-206.)

In arguing that Lopez did not suffer great bodily injury, defendant relies on the treating physician’s testimony that Lopez’s shoulder injury was without “significant” joint or muscle damage and that the abdominal wound did not damage internal organs. But a finding of great bodily injury does not require proof that the victim suffered “ ‘permanent,’ ‘prolonged’ or ‘protracted’ disfigurement, impairment, or loss of bodily function.” (*People v. Escobar* (1992) 3 Cal.4th 740, 750.) Nor is the jury’s finding of great bodily injury undermined by the physician’s classification of the abdominal wound as “superficial.” The physician explained that he meant the term in a technical sense to signify that the bullet did not penetrate abdominal structures. The term superficial was used as “a physical description of where the tract [of the bullet] itself was located,” not to minimize the injury. The physician clarified that the gunshot wound was “superficial to the abdominal cavity” but was not a superficial wound: “I think it’s hard to describe a gunshot wound as a superficial wound.” The evidence, viewed as a whole, supports the jury’s finding of great bodily injury.

DISPOSITION

The judgment is affirmed.

Pollak, J.

We concur:

McGuinness, P. J.

Siggins, J.