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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

GARRETT QUON,

Defendant and Appellant.

B230099

(Los Angeles County
Super. Ct. No. GA070684)

APPEAL from a judgment of the Superior Court of the County of Los Angeles, Janice C. Croft, Judge. Affirmed.

Alex Coolman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Susan Sullivan Pithey, Supervising Deputy Attorney General, and Michael J. Wise, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

Following a jury trial, defendant and appellant Garrett Quon (defendant) pleaded no contest to one count of voluntary manslaughter. On appeal, defendant contends that his statements to the police admitting involvement in the crimes charged should have been suppressed because they were obtained following his arrest without probable cause.

Because there was probable cause to arrest defendant, the trial court did not err in denying his motion to suppress his otherwise voluntary statements to the police. We therefore affirm the judgment.

FACTUAL BACKGROUND

During a probation compliance check conducted approximately two weeks before the shooting that gave rise to this case, a police officer found defendant and his girl friend, codefendant Thao Lenghiem, associating with the shooter, Wah Ching gang member David Do, in Do's apartment. Defendant and Lenghiem each admitted either former membership in or an association with the Wah Ching gang.

On the night of the shooting, witnesses saw Do in a light-colored car with an Asian male and an Asian female as the car entered a shopping center parking lot and approached a restaurant. The car slowed in front of the restaurant, and after a brief verbal exchange between Do and a group of patrons sitting outside the restaurant—which exchange included an utterance of the gang name Wah Ching—Do fired pistol shots into the group, killing one man and seriously wounding another.

Four days after the shooting, police officers conducted a traffic stop of a light-colored car driven by defendant, who was accompanied by Lenghiem and Do. The officers arrested defendant, Lenghiem, and Do, and defendant subsequently voluntarily admitted his involvement in the shooting.

PROCEDURAL BACKGROUND

In an information, the Los Angeles County District Attorney charged defendant¹ in count 1 with murder in violation of Penal Code section 187, subdivision (a)² and in count 2 with attempted willful, deliberate, premeditated murder in violation of sections 664 and 187, subdivision (a). The district attorney alleged as to counts 1 and 2 that a principal personally and intentionally discharged a firearm which proximately caused great bodily injury or death to the shooting victims within the meaning of section 12022.53, subdivisions (d) and (e)(1); that a principal personally and intentionally discharged a firearm within the meaning of section 12022.53, subdivisions (c) and (e)(1); and that a principal personally used a firearm within the meaning of section 12022.53, subdivisions (b) and (e). The district attorney further alleged that the charged offenses were committed for the benefit of, at the direction of, and in association with a criminal street gang with the specific intent to promote, further, and assist in criminal conduct by gang members within the meaning of section 186.22, subdivision (b)(1)(C). The district attorney also alleged as to counts 1 and 2 that the murder was intentional and perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person or persons outside the vehicle with the intent to inflict death within the meaning of section 190.2, subdivision (a)(21), and that defendant intentionally killed the decedent while defendant was an active participant in a criminal street gang, and the murder was carried out to further the activities of the criminal street gang, within the meaning of section 190.2, subdivision (a)(22)

Following trial, the jury acquitted defendant of murder and attempted murder. Because the jury was unable to reach a verdict on the lesser included offense of second degree murder, the trial court declared a mistrial as to that count.

¹ The District Attorney charged codefendant Lenghiem in count 3 of the information with being an accessory after the fact.

² All further statutory references are to the Penal Code.

During jury selection in the second trial, the parties reached a plea bargain. Pursuant to the agreement, the trial court amended the information by interlineation to add a count 4 charging defendant with voluntary manslaughter in violation of section 192, subdivision (a), as well as a gang allegation pursuant to section 186.22, subdivision (b)(1)(B) and a firearm use allegation pursuant to section 12022.53, subdivisions (b) and (e). The trial court sentenced defendant to the low term of three years, plus an additional ten-year term for the gun use allegation and an additional five-year term for the gang allegation, for an aggregate sentence of 18 years.

DISCUSSION

A. Suppression Motion Facts

Prior to trial, the trial court heard defendant's motion to suppress in which Lenghiem joined. Sergeant Trujillo and Detective Lankford testified to facts in support of the probable cause to arrest defendant and Lenghiem.

Sergeant Trujillo met with Detective Lankford who informed him that Do, a Wah Ching gang member, was a suspect in a murder. Detective Lankford also gave Sergeant Trujillo Do's address and names of known associates of Do, including defendant. Sergeant Trujillo was further advised that, in addition to Do, there was an Asian male suspect and an Asian female suspect with Do in the white compact car involved in the shooting.

On December 5, 2006, Sergeant Trujillo conducted surveillance on Do's residence. He saw a white vehicle pull up in front of the house with a male driving and a female in the front passenger seat. The female exited the front seat and entered the rear passenger seat. Another male entered and occupied the front passenger seat and the vehicle left the residence. Sergeant Trujillo directed a patrol unit to conduct a traffic stop of the vehicle. When he arrived at the scene of the stop, he saw that defendant was the

driver, Lenghiem was the rear passenger, and Do was the front passenger. All of them were placed under arrest.

Prior to the arrests, Detective Lankford had interviewed several witnesses who were present during the shooting. Although the witnesses' recollection concerning the color of the shooter's car varied,³ the descriptions of the people in the car were "pretty much the same"—Do, as the shooter in the right rear passenger seat, with another Asian male and an Asian female in the front of the car. One of the witnesses told Detective Lankford that the Asian female had either blond hair or a streak of blond in her hair. The witnesses also relayed that the gang name Wah Ching was mentioned just prior to the shooting.

Detective Lankford had spoken to Officer Lee about a "probation search" the officer conducted at Do's residence on November 18, 2006. According to Officer Lee, defendant and Lenghiem were at Do's residence during the search and they both admitted Wah Ching gang membership.

On December 4, 2006, Detective Lankford obtained a warrant for the arrest of Do. He and his partner were in contact with the team that was surveilling Do's residence and which made the traffic stop on December 5, 2006. The team that made the stop gave Detective Lankford descriptions of the persons in the car and a description of the car that were consistent with the descriptions Detective Lankford had been given by witnesses of the shooting on December 1, 2006. Detective Lankford also recalled that when defendant was arrested and booked, she had a blond or light brown streak in her hair.

Following the officers' testimony, the trial court heard argument and then ruled on the motion. According to the trial court, defendant was arrested, not detained, and Detective Lankford made the decision to arrest. Based on the information that Detective Lankford had at the time of defendant's arrest, the trial court denied the motion to suppress, finding there was probable cause to arrest defendant.

³ The consensus of the witnesses was that the car was light-colored, possibly white.

B. Probable Cause Analysis

Defendant contends that Detective Lankford did not have probable cause to arrest him on December 5, 2006, for the shooting that occurred on December 1, 2006.

According to defendant, the witnesses' descriptions of the Asian male involved in the shooting were too general to support a reasonable inference that defendant was that male.

“The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” In conformity with the rule at common law, a warrantless arrest by a law officer is reasonable under the Fourth Amendment where there is probable cause to believe that a criminal offense has been or is being committed.’ (*Devenpeck v. Alford* (2004) 543 U.S. 146, 152 [160 L.Ed.2d 537, 125 S.Ct. 588].)” (*People v. Thompson* (2006) 38 Cal.4th 811, 817.) “Probable cause exists when the facts known to the arresting officer would persuade someone of “reasonable caution” that the person to be arrested has committed a crime. [Citation.] “[P]robable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts” (*Illinois v. Gates* (1983) 462 U.S. 213, 232 [76 L.Ed. 2d 527, 103 S.Ct. 2317].) It is incapable of precise definition. (*Maryland v. Pringle* (2003) 540 U.S. 366, 371 [157 L. Ed.2d 769, 124 S.Ct. 795].) “The substance of all the definitions of probable cause is a reasonable ground for belief of guilt,” and that belief must be “particularized with respect to the person to be . . . seized.” (*Ibid.*)’ (*People v. Celis* [(2004)] 33 Cal.4th [667,] 673.)” (*People v. Thompson, supra*, 38 Cal.4th at p. 818.)

“In reviewing the trial court’s ruling on the suppression motion, we uphold any factual finding, express or implied, that is supported by substantial evidence, but we independently assess, as a matter of law, whether the challenged search or seizure conforms to constitutional standards of reasonableness. (*People v. Williams* (1988) 45 Cal.3d 1268, 1301 [248 Cal.Rptr. 834, 756 P.2d 221].)” (*People v. Hughes* (2002) 27 Cal.4th 287, 327.)

The trial court concluded that Detective Lankford made the decision to arrest defendant, and therefore determined the issue of probable cause to arrest based on the

information the detective knew at the time of defendant's arrest. That information included the details of the November 18, 2006, probation compliance check less than two weeks prior to the shooting, during which defendant and Lenghiem were found associating with Do and each of them admitted to being active or former Wah Ching gang members or associates. Detective Lankford was also aware that a week before the shooting, a witness observed Do drive past the Lollicup, accompanied by an Asian male and an Asian female. During that incident, Do was heard asking persons sitting outside the Lollicup where they were from. Detective Lankford also interviewed several eye witnesses to the shooting who, in addition to identifying Do as the shooter, told the detective that Do said "Wah Ching" just before the shooting and was accompanied in a light-colored car by an Asian male and an Asian female. One witness also reported that the Asian female had blond hair or a blond or burnt streak in her hair, but it is unclear whether this description of the female suspect's hair color was provided to the arresting officers prior to their stop of the suspect vehicle. Detective Lankford recalled that Lenghiem had a blond or burnt streak in her hair on the day of her initial arrest and interrogation.

The information that Detective Lankford had on that day of the arrest was sufficient to support a reasonable belief that defendant was the Asian male who accompanied Do on the night of the shooting. Detective Lankford knew defendant was with Do at his apartment, along with Lenghiem, during the probation compliance check less than two weeks before the shooting and that they were all Wah Ching gang members. A week later, Do was seen driving by the Lollicup with an Asian male and an Asian female in a light-colored car, and Do was overheard asking people in front of the restaurant where they were from, which facts suggested that Do and his companions had engaged in gang-related activity at the location of the shooting just a week before. That information, combined with the similar descriptions of the suspects and their car on the night of the shooting, supported a rational inference that the Asian male and Asian female who were found with Do in a white car on December 5, 2006, just four days after the shooting, were the same suspects described by witnesses of the shooting. In short, the

same three people who fit the descriptions given at the crime scene were seen together at Do's residence, were associated in the same gang, and again entered the same vehicle that fit the identification of the vehicle used to commit the crime. The available information was sufficiently detailed and reliable to justify defendant's arrest. A person of reasonable caution could believe from the totality of the circumstances known to the detective that defendant committed the crimes for which he was arrested, i.e., murder and attempted murder.

DISPOSITION

The judgment is affirmed.

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MOSK, J.

We concur:

ARMSTRONG, Acting P.J.

KRIEGLER, J.