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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANCISCO JAVIER RAMOS,

Defendant and Appellant.

B232688

(Los Angeles County  
Super. Ct. No. KA090047)

APPEAL from a judgment of the Superior Court of Los Angeles County, Carol Williams Elswick, Judge. Affirmed.

Kevin D. Sheehy, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Francisco Javier Ramos appeals from the judgment entered following his conviction by jury of willful, deliberate, and premeditated attempted murder. The jury also found defendant personally used and discharged a firearm causing great bodily injury to the victim and committed the crime for the benefit of a criminal street gang. (Pen. Code, §§ 664, 187, subd. (a); 664, subd. (a); 12022.53, subs. (b), (c), and (d); 186.22, subd. (b)(1)(C).) Defendant was sentenced to life for the attempted murder and a consecutive term of 25 years to life for intentionally discharging a weapon and causing great bodily injury to the victim. Finding no error, we affirm.

### **STATEMENT OF FACTS**

In March 2010, Donald Bowman was living in a home in Pomona with his mother-in-law and brother-in-law, Salvador Vega. Defendant lived in the residence next door. Bowman and Vega saw defendant often and they exchanged greetings. Defendant introduced himself as “Slow” from “Happy Town.” Happy Town was a local gang. According to Bowman, the neighborhood had graffiti “[a]ll over the place,” and he saw “Slow” written on the sidewalk on a couple of occasions.

Sometime around the beginning of March, Vega spoke to defendant about the gang graffiti. Defendant’s moniker was on the curb in front of Vega’s house. Vega asked defendant if he was tagging and defendant admitted that he was. Vega asked him several times if he would be willing to stop. On each occasion, defendant responded with a “blank stare.” Vega thought the presence of graffiti brought “negative attention” to his house and its residents. Vega admitted that he associated with members of the Olive Street gang.

At about 8:00 p.m. on March 17, Bowman and Vega were walking. Bowman heard someone say, “Sal, you know who I am,” and “Fuck Olive Street.” In addition to those words, Vega heard the person state, “This is Happy Town.” Vega saw that the person had a gun. Vega told Bowman to run and Bowman ran toward their house. He

heard five or six gunshots. Vega also started to run. He ran a quarter of a block and was struck by two gunshots. Bowman turned and saw Vega fall.

As he lay on the ground, Vega called 911. The police arrived a short time later. Vega told officers that he believed defendant had shot him. Vega was transported to the hospital and remained there for a week. The bullets, one in Vega's back and the other in his ankle, were not removed.

After the shooting, Vega was interviewed by a detective and asked to look at a photographic lineup. Vega circled one of the photographs and said it depicted the shooter. Vega also told the detective that defendant was the person who shot him. In court, Vega stated that he did not see the shooter's face. Vega thought he had provoked defendant by asking him to stop tagging in the neighborhood. Because of that incident, Vega believed defendant was his assailant. Vega admitted he was nervous about offering testimony in court because he feared retaliation against his family.<sup>1</sup>

At trial, Bowman said he did not recognize the voice of the person who spoke on the night of the shooting. He denied telling an officer that defendant was the person who shot Vega.<sup>2</sup> Bowman acknowledged that on March 31, police showed him a photographic lineup and that he circled a photograph of defendant. He stated he did so to indicate that defendant was a neighbor, not that he was the shooter.<sup>3</sup>

Greg Freeman is a gang detective with the Pomona Police Department. According to Freeman, it is not uncommon for a victim or witness to identify perpetrators of crimes to the police and refuse to do so in court. The detective downloaded photographs from defendant's MySpace page depicting Happy Town graffiti and defendant's gang tattoos. Freeman stated that if an Olive Street gang member told a Happy Town member to stop

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<sup>1</sup> Vega acknowledged that he identified defendant as the shooter at the preliminary hearing and did not say that he merely believed defendant was responsible.

<sup>2</sup> A police officer testified that he spoke to Bowman on the night of the shooting and Bowman said he recognized the shooter, who was his neighbor.

<sup>3</sup> The detective who showed Bowman the photographs testified that Bowman was asked if he could identify the shooter. In response, he pointed to defendant's picture.

tagging the neighborhood, that would be a sign of disrespect. Presented with a hypothetical based on the facts of this case, Freeman opined that the hypothetical crime was committed for the benefit of the Happy Town gang.

Freeman spoke to Vega at the hospital. Vega told Freeman that he asked defendant to stop tagging the neighborhood. Contrary to his trial testimony, Vega said defendant responded by stating, “We’ll see, fool.” According to Freeman, he showed Vega a photographic lineup and asked him to identify the shooter. Vega pointed to defendant’s picture and said, “That’s him.”<sup>4</sup> Freeman noted that Vega told him prior to testifying that he could not and would not identify the shooter.

## DISCUSSION

After reviewing the record on appeal, defendant’s counsel filed an opening brief and requested that this court independently review the record for appellate issues pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Counsel filed a declaration stating that he had sent defendant a letter advising him of the nature of the brief, a copy of the brief, and the record.

On October 20, 2011, we advised defendant he had 30 days within which to submit any issues that he wished us to consider. To date, we have received no response.

We have independently reviewed the record. We are satisfied that no arguable issues exist and that defendant has, by virtue of counsel’s compliance with the *Wende* procedure and our independent review of the record, received effective appellate review of the judgment entered against him. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-279; *People v. Kelly* (2006) 40 Cal.4th 106, 123-124.)

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<sup>4</sup> An officer who responded to the scene of the shooting saw Vega lying in the street and spoke to him. Vega said his assailant was “Slow” from Happy Town.

**DISPOSITION**

The judgment is affirmed.

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SUZUKAWA, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.