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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

NARCISO REYES,

Defendant and Appellant.

B233400

(Los Angeles County
Super. Ct. No. BA364853)

THE COURT:*

Defendant and appellant Narciso Reyes (defendant) appeals his judgment of conviction of attempted murder and aggravated mayhem. His appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), raising no issues. On November 14, 2011, we notified defendant of his counsel's brief and gave him leave to file, within 30 days, his own brief or letter stating any grounds or argument he might wish to have considered. Defendant submitted a letter raising two issues: prosecutorial misconduct in handling evidence, and ineffective assistance of counsel. We have reviewed defendant's letter and the entire record, and finding no arguable issues, we affirm the judgment.

* BOREN, P. J., CHAVEZ, J., ASHMANN-GERST, J.

After a preliminary hearing, defendant was charged in count 1 of a two-count information with the attempted willful, deliberate and premeditated murder of Salvador Munguia (Munguia) in violation of Penal Code section 664/187, subdivision (a).¹ Count 2 alleged that defendant committed aggravated mayhem upon Munguia in violation of section 205. The information alleged as to both counts that defendant personally and intentionally discharged a handgun within the meaning of section 12022.53, subdivisions (c) and (d). The information further alleged pursuant to section 186.22, subdivision (b)(1)(C), that the crimes 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.

A jury convicted defendant of both counts as charged, and found true the firearm and gang allegations. The trial court sentenced defendant to a prison term of 15 years to life on count 1, plus a consecutive term of 25 years to life pursuant to section 12022.53, subdivision (b). The court stayed the 10-year gang enhancement pursuant to section 186.22, subdivision (b)(5). The punishment on count 2 was stayed pursuant to section 654. Defendant filed a timely notice of appeal.

The prosecution's evidence showed that shortly before 4:00 p.m. on October 24, 2009, defendant shot Munguia once in the arm, once in the leg, and several times in his penis and scrotum as he sat in a friend's garage watching a football game. Munguia underwent surgery to repair damage to his penis and to remove one testicle. He also suffered a fracture of his right humerus.

Munguia identified defendant as the shooter; he had encountered defendant several times before the shooting and knew him as Chicho, a member of the White Fence gang. Munguia had been working as a confidential informant for an undercover narcotics detective, and defendant had called him a "rat" and threatened him on more than one occasion. Munguia was "100 percent positive, without any doubt," that it was defendant who shot him.

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

Los Angeles Police Officer Mario Morales, the prosecution's gang expert, testified regarding the White Fence gang and gang culture in general. He also knew defendant, who had admitted to him that he was a member of the White Fence gang. Officer Morales testified that gangs operated through fear and intimidation in order to command respect from the community, rival gang members, and the gang's own members. A member or prospective member could elevate his status by committing crimes considered beneficial to the gang, especially violent and retaliatory crimes. Anyone assisting law enforcement would be labeled a "snitch" or a "rat" by gang members and targeted for retaliation. The targeted person could earn back his good standing either by paying a large sum of money to the gang or by committing a crime as directed by the gang, such as shooting a known snitch.

Officer Morales was of the opinion that the facts of the shooting in this case were consistent with a retaliatory crime committed to earn back the shooter's good standing in the gang. Officer Morales also stated his opinion that the shooting was done at the direction of and for the benefit of the White Fence gang. He explained that in 2008, after a White Fence gang member shot defendant's stepson, defendant cooperated with law enforcement in the investigation, and was later assaulted by a member of defendant's own gang.

Defendant testified in his defense that he was not a member of the White Fence gang. Defendant denied that he shot Munguia and claimed he had never seen Munguia prior to the preliminary hearing. He claimed that he was at home with his wife and stepdaughter the entire day of the shooting until 5:00 p.m. On cross-examination, defendant acknowledged that he had been interviewed by Detective Alfaro after his arrest, and the prosecutor drew out some inconsistencies between what he told the detective in the interview and his testimony at trial.

Defendant contends that the prosecutor and a witness, Los Angeles Police Officer Anthony Lanza, contaminated the bullet casings that Officer Lanza had collected from the scene of the shooting, by handling them at trial in a manner that eliminated the possibility that the casings would yield usable fingerprints. The record indicates that

fingerprint evidence would not necessarily have exonerated defendant or even have had much probative value: No gun was recovered in this case; there was no evidence that the casings were tested for fingerprints; and Officer Morales testified that gang members often shared guns within the gang. The prosecution was not required to present all available evidence regardless of its probative value. (*People v. Simms* (1970) 10 Cal.App.3d 299, 313.)

Defendant also asserts ineffective assistance of counsel, based upon a comment made by defense counsel during oral argument. The prosecutor objected when defense counsel suggested to the jury that the prosecution had withheld the video of defendant's interview with Detective Alfaro. At the sidebar discussion, the prosecutor and the court reminded defense counsel that the prosecutor had consented to the playing of the video in its entirety if the defense chose to do so. Defense counsel replied, "Well then I've committed malpractice and I've committed ineffective assistance of counsel." It is unclear whether defense counsel faulted himself for his misleading argument or for failing to play the video. As defendant has not demonstrated that either possibility caused any prejudice, he has stated no ground for reversal. (See *Strickland v. Washington* (1984) 466 U.S. 668, 694; *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1126.)

Because of counsel's compliance with the *Wende* procedure and our review of the record, we conclude that defendant has received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

The judgment is affirmed.