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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

RONALD GILLION,

Defendant and Appellant.

B257691

(Los Angeles County  
Super. Ct. No. NA096973)

APPEAL from the judgment of the Superior Court of Los Angeles County.

James B. Pierce, Judge. Affirmed.

Thien Huong Tran, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and David E. Madeo, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Ronald Gillion was convicted of attempted first degree murder (Pen. Code, §§ 187, subd. (a), 664), and firearm and great bodily injury enhancements were found to be true (§§ 12022.53, subd. (d), 12022.7). The victim identified defendant, a gang member, to police as the shooter, but recanted at trial. Because victim intimidation was at issue, the trial court permitted evidence that a fellow gang member's female companion visited the victim in the hospital, and after the visit, the victim was shaken and reluctant to cooperate with police. Defendant contends his conviction is not supported by substantial evidence of his identity, and that the trial court erred by admitting irrelevant and prejudicial evidence of victim intimidation. Finding no merit in these contentions, we affirm.

### **FACTS**

The victim, John D., was a reluctant witness. He admitted he did not want to testify. John D. was forced to testify, and was "threatened" by the police and the district attorney that he would be put in jail if he did not testify. No one other than police had threatened John D. However, John D. admitted he was afraid of retaliation if he testified.

John D. testified that on September 28, 2012, he lived in an apartment at the back of a multi-family property on Lime Avenue in Long Beach. Also on the property was another apartment, next door to John D.'s, a small house in the middle of the property, and a large front house. Jacqueline T. lived in the apartment next door to John D. John D. had known her for approximately two years, and the two had dated briefly. John D. had seen defendant visit Jacqueline T. a number of times. Two weeks before the September 28 shooting, defendant was listening to loud music at Jacqueline T.'s apartment. John D. asked him to turn the music down. Jacqueline T. later confronted John D., complaining that she never told him to turn his music down. Following this argument, John D. and Jacqueline T. did not speak for the next couple of weeks.

At 9:00 p.m. on September 28, 2012, as John D. was returning home, he noticed Jacqueline T. standing on the porch of the front house on their property, talking to the tenant of that house. John D. was "very intoxicated." John D. stopped to talk to Jacqueline T., asking her why she had "turned [her] back" on their friendship. Their

conversation became heated; John D. was “very angry.” John D. left momentarily, and when he returned, he noticed that Jacqueline T. was on the phone. He heard Jacqueline T. say, “He over here tripping. You need to come and handle this.” John D. testified that he did not know who Jacqueline T. was talking to on the phone.

However, John D. also testified that after Jacqueline T. made this call, he was concerned he was about to get into a fight. A crowd had gathered because of his argument with Jacqueline T., and he saw a tan PT Cruiser pulling up to the property. John D. had taken his glasses off, and could not see very well, but it appeared that defendant had gotten out of the passenger side of the car. John D. saw defendant walk towards the back of the property, where the apartments were located. John D. did not see him again after that. As John D. continued talking to Jacqueline T. he heard a gunshot, and turned around. He saw “flashes” and realized he had been shot. John D. was shot once in his elbow, once in his right leg, once in his left leg, three times in his stomach, and once in the back of his head. John D. did not see the person who shot him.

John D. denied most of his statements to police, and denied telling police that defendant was the person who shot him. He did tell police he *suspected* defendant was the person who shot him. However, he did not identify defendant as the shooter in the courtroom.

While in the hospital, John D. identified two people from a photographic array as looking like the shooter. Defendant’s picture was not included in the array.

Later, while John D. was still in the hospital, he gave a picture of defendant (also known as “Lil C Style”) to detectives, which he had downloaded from an Internet website that displayed defendant’s rap album cover. He testified that he told detectives that defendant was present when he was shot but not that defendant was the shooter. Detectives later returned with another photographic array which included defendant, and this time, John D. circled defendant’s picture. At trial, he denied writing “Lil C Style was the man who shot me on 9-28-2012” on the array. He said he only circled defendant’s photograph because defendant was present at the shooting.

A neighbor, Tony R., identified defendant in a photographic array as the person he saw sneaking along the property toward John D.'s and Jacqueline T.'s apartments, and then sneaking toward where John D. and Jacqueline T. were arguing, just before shots were heard. At trial, Tony R. denied his statements to police, and said that he had only identified defendant as a neighbor to police. Tony R. admitted he did not want to testify and was fearful of retaliation.

Jacqueline T. testified that defendant went by "C Style." She had known him for three or four months before the shooting, and he frequently stayed at her apartment. On the night of the shooting, John D. started an argument with Jacqueline T., calling her names. While the two of them traded insults, Jacqueline T. returned a missed call from defendant. Defendant overheard her argument with John D., and asked who she was arguing with. Jacqueline T. told him, but denied telling defendant to "handle" the situation. Defendant told Jacqueline T. he was coming over to pick up some of his things. Jacqueline T. saw defendant arrive. She also saw John D. go to his apartment, and return with two large bottles he was clanking together. Jacqueline T. went inside the front house to use the restroom and heard two shots. When she came out of the house, she saw that John D. had been shot. She left the scene and did not give a statement to police that night.

John D.'s girlfriend, Karen R., testified that defendant went by "Lil C Style." She knew him because they grew up in the same neighborhood. There was also a Big C Style and Tiny C Style in the neighborhood. On September 30, 2012, Karen R. overheard a conversation between Big C Style and Vivian Scott, also known as Peaches. A week later, on October 7, Ms. Scott visited John D. in the hospital. Ms. Scott asked Karen R. to leave the room so she could speak privately with John D. After Ms. Scott's visit, John D. was "pretty shaken up" and "nervous." After the visit, John D. said he did not want to cooperate with police.

On October 6, while Karen R. was visiting John D. at the hospital, John D. had the nurse conduct a Google search for "Lil C Style" to find a picture of defendant. They printed the picture from the Internet, and later gave it to detectives.

When the prosecutor asked Karen R. to identify some photographs of Big C Style, defendant, Jacqueline T., and Ms. Scott, Karen R. exclaimed, “You guys putting me on a snitch card. For real I’m going to end up dead messing around with these court people, man.” When asked if she wanted to testify, Karen R. stated that she was afraid of being killed. She had been threatened.

Long Beach Police Officer Jorge Marquez responded to the shooting on September 28. John D. told police that “C Style” had shot him, and that C Style was a member of “one niner” or the 19th Street Crips. John D. told responding officers that he had gotten into an argument with his neighbor, Jacqueline T., and that she sent C Style over. Marquez booked two 9-millimeter shell casings into evidence.

Based on John D.’s statements to police, Long Beach Detective Sean Magee identified Christopher Bowden, also known as Big C Style; defendant, also known as Lil C Style; and Michael Bowden, also known as Tiny C Style, as possible suspects in the shooting. All three were members of the 19th Street Crips. Tiny C Style was included in the original photographic array shown to John D., based on the description of the suspect. Defendant’s picture was not included. On October 3, John D. picked Tiny C Style and another man as looking like the shooter, but he was not confident in his identification.

On October 8, Detective Magee and Detective Adrian Garcia returned to the hospital, after John D. told Detective Garcia he found a picture of “the C Style that had shot him” on the Internet. John D. showed the detectives a picture of defendant’s album cover on his phone. Therefore, Detective Magee created a new photo array which included defendant, and John D. identified defendant as his shooter. John D. did not have any doubts about who shot him.

According to Detective Garcia, John D. reported that there was tension between him and defendant, based on the loud music incident a couple of weeks before the shooting. John D. had also complained to the property owner that defendant was living in Jacqueline T.’s apartment. John D. told Detective Garcia that on the night of the shooting, he and Jacqueline T. had been arguing about Jacqueline T. allowing other people into her apartment. John D. told Jacqueline T. he reported defendant to the

property manager. While John D. and Jacqueline T. were arguing, Jacqueline T. made a phone call. She told the person on the other end of the line, “You call yourself my brother. I told you there was going to be a problem. You need to come over and handle this.” John D. believed she was speaking to defendant, as she often referred to him as her “brother.” Concerned he was about to get into a fight, John D. went to his apartment, then returned to the front house, and noticed a tan PT Cruiser pull up, and defendant get out of the passenger door.

Just before the shooting, defendant exclaimed, “These n----- are going to get tired of f----- with me, cuz.” Defendant was several feet away, and was holding a nine millimeter semi-automatic pistol. John D. told Detective Garcia that defendant shot him seven times. John D. also told Garcia that defendant was a member of the 19th Street Crips gang.

On October 6, Karen R. called Detective Garcia to report that she and John D. had found a picture of John D.’s shooter on the Internet. Later that day, a nurse at the hospital emailed a photograph of defendant’s rap album to Detective Garcia. On October 8 (the day after Ms. Scott visited John D. in the hospital), John D. called Detective Garcia, and was “very upset.” He was “no longer interested in pursuing the case and didn’t want to continue with the investigation.” John D. was scared for his family, and about being labeled a “snitch.” Detectives Garcia and Magee went to see John D. in person at the hospital. John D. denied being threatened or bribed concerning his cooperation in the investigation. John D. did show detectives a photograph of defendant’s rap album on his mobile phone, and identified defendant as the person who shot him. John D. also identified defendant in a photographic array as his shooter.

According to Detective Garcia, John D. was reluctant to testify at the October 22 preliminary hearing. He was scared for his family’s safety.

Defendant testified that he did not shoot John D. Defendant admitted that he was called Lil C Style, and that he released an album with his picture on the cover. Big C Style was his mentor. Defendant was present at the Lime Street property on September

28, to pick up some clothes. He witnessed some commotion and saw a skinny black man pull a gun on John D. Defendant ran away and heard two gunshots.

Detective Garcia testified in rebuttal that in an interview with police, defendant admitted to being a 19th Street Crip member. Defendant never said he saw someone with a gun, and never identified a shooter.

## **DISCUSSION**

### **1. Sufficiency of the Evidence**

Before a judgment of conviction can be set aside for insufficiency of the evidence, it must clearly appear that on no hypothesis whatsoever is there sufficient evidence to support the judgment. (*People v. Redmond* (1969) 71 Cal.2d 745, 755; *People v. Johnson* (1980) 26 Cal.3d 557, 575-578.) The record must be reviewed in its entirety when determining whether any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could have found the defendant guilty beyond a reasonable doubt. (*Jackson v. Virginia* (1979) 443 U.S. 307, 316-320; *People v. Marshall* (1997) 15 Cal.4th 1, 34; *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) “[T]he court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence -- that is, evidence which is reasonable, credible, and of solid value -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Johnson*, at p. 578.) The substantial evidence standard of review is the same when the evidence of guilt is circumstantial. (*People v. Holt* (1997) 15 Cal.4th 619, 668.)

Defendant contends that “[John D.] testified that he did not actually see who shot him.” He therefore posits that there was insufficient evidence of identity in support of the jury’s verdict. We are not persuaded. Defendant ignores John D.’s repeated positive identifications of defendant to police before trial, and the police testimony about his demeanor when he made those identifications. There was ample evidence that John D. was reluctant to testify, and that he ultimately recanted his earlier identifications because he was scared of retaliation. An out-of-court identification of the defendant is sufficient to support a conviction, even if not confirmed in court. (*People v. Cuevas* (1995) 12

Cal.4th 252, 263-275.) Moreover, Tony R. identified defendant as the person seen sneaking up just before the shooting, and running away just after. And Jacqueline T., who asked defendant to “handle this,” fled the scene immediately after the shooting. There was substantial evidence of defendant’s guilt.

## **2. Evidence of Witness Intimidation**

Defendant also contends the trial court erred when it admitted Karen R.’s testimony about the conversation she overheard between Big C Style and Ms. Scott (Peaches), and Ms. Scott’s visit to John D. in the hospital. At trial, defense counsel objected to the proffered testimony on relevance grounds. The prosecutor argued it was circumstantial evidence of witness intimidation, and was being offered to explain why John D. had “chang[ed] his story.” The prosecutor represented that police would testify to a relationship between Big C Style and Little C Style. The trial court admitted the evidence, but ordered that Karen R. could not testify about the content of the conversation between Big C Style and Peaches.

“ ‘Only relevant evidence is admissible [citations], and all relevant evidence is admissible unless excluded under the federal or California Constitution or by statute. [Citations.] Relevant evidence is defined in Evidence Code section 210 as evidence “having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” The test of relevance is whether the evidence tends “ ‘logically, naturally, and by reasonable inference’ to establish material facts such as identity, intent, or motive. [Citations.]” [Citation.] The trial court has broad discretion in determining the relevance of evidence [citations] but lacks discretion to admit irrelevant evidence. [Citations.]’ [Citation.]” (*People v. Heard* (2003) 31 Cal.4th 946, 972-973.)

The trial court’s discretion to admit evidence is subject to the requirements of Evidence Code section 352. Relevant evidence may be excluded if its probative value is outweighed by a danger of undue prejudice, is merely cumulative to other evidence, or will consume an undue amount of time. (*People v. Branch* (2001) 91 Cal.App.4th 274,

281-282.) A trial court's ruling to admit or exclude evidence is reviewed for abuse of discretion. (*People v. Olguin* (1994) 31 Cal.App.4th 1355, 1373.)

Because Lil C Style and Big C Style were members of the same gang, Karen R.'s testimony was probative of witness intimidation, and explained why John D.'s story changed. John D. had been certain about his identifications of defendant as his shooter, only to claim at trial that defendant did not shoot him. Shortly after Karen R. overheard a conversation between Big C Style, defendant's "mentor," and Ms. Scott, Ms. Scott went to the hospital to speak privately with John D. After she left, John D. was shaken up, nervous, and said he did not want to cooperate with police. John D. was "very upset" when he called Detective Garcia the next day, and said he was "no longer interested in pursuing the case and didn't want to continue with the investigation."

Given the testimony's obvious relevance, and the very small danger of undue prejudice given the brevity and content of the testimony, we find no abuse of discretion.

#### **DISPOSITION**

The judgment is affirmed.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

FLIER, J.