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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

ROUSAN HENLEY,

Defendant and Appellant.

C068553

(Super. Ct. No. 10F03243)

In this case we find no merit in the three contentions raised by defendant Rousan Henley because he cannot show prejudice. His contentions are: (1) the court abused its discretion in admitting evidence that in 2000 one of his rival gang members had been killed; (2) the court abused its discretion by admitting evidence that in 2009 he had been the victim of a shooting and while he recovered in the hospital, two gang-related retaliatory shootings occurred; and (3) defense counsel was ineffective for failing to request a limiting instruction on the use of gang-related evidence. We find no prejudice because the evidence was overwhelming for the two

crimes of which the jury found defendant guilty (being a felon in possession of a firearm and unlawfully possessing ammunition) and the gang evidence did not have a damaging effect on defendant's trial because the jury could not reach a verdict on the remaining charges (the crime of actively participating in a street gang and the enhancement of committing a crime for the benefit of a street gang that was attached to the crime of being a felon in possession of a firearm) and the court declared a mistrial as to those charges.

FACTUAL AND PROCEDURAL BACKGROUND

Sacramento police officers searched the Rio Linda Boulevard apartment defendant shared with his wife and child in May 2010 pursuant to a search warrant. Just inside the door of defendant's apartment, the police found a loaded nine-millimeter semiautomatic handgun in a zippered pouch. In the kitchen drawer was a box of partially used .22-caliber ammunition. Inside a car that was parked outside the apartment were several rounds of live nine-millimeter ammunition and a camcorder. Inside the camcorder was a video showing defendant with what appeared to be the same handgun resting on his leg saying, "'I would have hated to caught that murder because we'da went down.'"

In addition to finding a gun and ammunition in the apartment, police also found blue clothing, a sign saying "Nogales Street," and pictures of defendant wearing a "Nogales" shirt. The Nogales Gangster Crips, whose color was blue, was a

subset of the Crips street gang and operated along Rio Linda Boulevard.

Defendant identified himself as a member of the Nogales Gangster Crips and had been involved with the gang since at least 2000. In that year, Hector Rosales was shot to death following an argument between the Nogales Gangster Crips and its rival, Del Paso Heights Bloods. There were three Nogales Gangster Crips involved. Defendant pled no contest to assault with a firearm as an aider and abettor.

In 2009, defendant was shot in the arm in the vicinity of where Rosales had been murdered. Defendant did not provide police with any meaningful details about his shooting. While defendant was recovering in the hospital, there was a second shooting in the vicinity of where he was shot. A few weeks later, there was a third shooting in front of defendant's apartment. According to police, retaliation was a common way to handle gang business.

DISCUSSION

As we noted in the beginning of the opinion, defendant raises three appellate contentions: (1) the court abused its discretion by admitting evidence of the shootings that occurred after defendant was hospitalized; (2) the court abused its discretion in admitting evidence of the Rosales murder; and (3) defense counsel was ineffective for failing to request a limiting instruction on the use of this (and other) gang-related evidence.

To prevail on appeal on any one of these contentions, defendant must show prejudice. (See, e.g., *People v. Richardson* (2008) 43 Cal.4th 959, 1001 [the erroneous admission of evidence does not require reversal except where the error caused a miscarriage of justice]; *People v. Watson* (1956) 46 Cal.2d 818, 836 ["[A] 'miscarriage of justice' should be declared only when the court, 'after an examination of the entire cause, including the evidence,' is of the 'opinion' that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error"]; *In re Ross* (1995) 10 Cal.4th 184, 201 [a defendant asserting ineffective assistance of counsel must demonstrate "there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been more favorable to defendant, i.e., a probability sufficient to undermine confidence in the outcome"].) There was no such reasonable probability here.

The evidence was overwhelming for the offenses of which defendant was convicted. Not only was the gun found in defendant's apartment, he was caught on videotape possessing what appeared to be the same gun. Specifically, a fully-loaded nine-millimeter semiautomatic handgun was found in a zippered pouch just inside the door of defendant's apartment and a box of partially used .22-caliber ammunition was found nearby. Inside a car linked to defendant were several additional rounds of live nine-millimeter ammunition and a video clip showing defendant with what appeared to be the same handgun on his leg.

In addition to this evidence that defendant possessed the gun and ammunition, the verdicts (or lack thereof) suggest the gang evidence could not have prejudiced him. Far from being inflamed by the gang evidence, the jury was unable to reach a verdict on the gang crime and gang enhancement. The failure to reach a verdict suggests that the challenged evidence did not prejudice the jurors, who appear to have carefully considered the evidence when deciding the various issues before them.

DISPOSITION

The judgment is affirmed.

ROBIE, Acting P. J.

We concur:

DUARTE, J.

HOCH, J.