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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. JESSIE HORN, Defendant and Appellant.	D058697 (Super. Ct. Nos. SCD190755, SCD220652)

APPEALS from judgments of the Superior Court of San Diego County, Frank A. Brown, Judge. Affirmed.

Jessie Horn appeals two judgments convicting him of criminal offenses. In case No. SCD190755, Horn pled guilty to making criminal threats (Pen. Code, § 422);[1] imposition of sentence was suspended; and he was granted probation. Upon Horn's subsequent conviction in case No. SCD220652, probation was revoked, and he was sentenced to prison for two years.

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1 Undesignated section references are to the Penal Code.

In case No. SCD220652, a jury found Horn guilty of two counts of robbery (§ 211) and two counts of assault with a semiautomatic firearm (§ 245, subd. (b)). The jury also found true allegations Horn personally used a firearm in the commission of the offenses (§§ 12022.5, subds. (a), (d), 12022.53, subd. (b)); and committed the offenses for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22, subd. (b)(1)). At a subsequent bench trial, the court found true allegations Horn had two prior serious felony convictions (§ 667, subd. (a)) and three prior strike convictions (§§ 667, subds. (b)-(i), 1170.12). The court sentenced Horn to prison under the "Three Strikes" law (§§ 667, subds. (b)-(i), 1170.12) for a total indeterminate term of 78 years to life, plus a consecutive total determinate term of 60 years. (See §§ 667, subd. (e)(2)(A)(iii), 1170.12, subd. (c)(2)(A)(iii).)

On appeal, Horn raises no challenge to the judgment in case No. SCD190755. He contends the judgment in case No. SCD220652 must be reversed because the evidence is insufficient to support the jury's guilty verdicts and true findings on the firearm and gang enhancement allegations, and the court did not exercise its sentencing discretion but simply "rubberstamped" the prosecutor's recommendation. We affirm both judgments.

I

Appeal in Case No. SCD190755

Although Horn filed a notice of appeal from the judgment in the case revoking probation and sentencing him to prison for two years (case No. SCD190755), he states in his opening brief that "no issues are raised on appeal in [that] case." Ordinarily, when an appellant does not raise claims of reversible error or other defect in the judgment

appealed, we may treat the appeal as abandoned and dismiss it. (E.g., *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 544, fn. 8; *In re Sade C.* (1996) 13 Cal.4th 952, 994.) To the extent we are required independently to assess the record for error because this is a criminal case, we have done so, and determined there are no reasonably arguable issues concerning the correctness of the judgment. (*People v. Wende* (1979) 25 Cal.3d 436.) "Once the record has been reviewed thoroughly, little appears to be gained by dismissing the appeal rather than deciding it on its merits." (*Id.* at p. 443.) We therefore affirm the judgment in case No. SCD190755.

II

Appeal in Case No. SCD220652

A. *Background Facts*

1. *The Robbery and Its Immediate Aftermath*

Kimberly Elliott and Eulalio Leon were working at an adult book store one night when, shortly after midnight, a masked man entered the store and pointed a black semiautomatic handgun at them. Neither Elliott nor Leon saw the man's face because it was covered by a black cloth that looked like a stocking and was thicker than pantyhose. The man also wore black gloves and other clothing that covered his entire body. The man ordered Elliott and Leon to get on the floor and to give him the money in the cash register. Elliott opened the cash register and placed approximately $300 in a plastic bag which the masked man handed her. The man then fled.

After the robbery, Elliott activated an alarm, and Leon telephoned 911. The police arrived almost immediately. They spotted a man as he ran out of the store carrying a bag

or a mask. As the man ran up the street, the police followed in their patrol car but lost sight of him.

Two other witnesses saw a man carrying a plastic grocery bag and running up the street toward a parked car. They heard the man tell the driver of the parked car to "go, go, get out of here." As the car drove away, the man jumped a fence between two apartment complexes.

The police followed the car into a cul-de-sac. When the car stopped, the officers exited their patrol car and approached the driver. One of the officers saw the driver was holding a pistol; the officer drew his gun, pointed it at the driver and ordered the driver to drop his gun. The driver did not comply, but instead fired at the other officer. Both officers then returned fire, killing the driver. The driver was later identified as Maurice Antoine White, a member of the Lincoln Park criminal street gang.

2. *The Subsequent Police Investigation*

Soon after the robbery and shooting, police officers searched the areas around the adult book store and the fence over which the robber had jumped. Near the book store, an officer found a pair of black and gray gloves and a black semiautomatic handgun. Near the fence, another officer found a white plastic bag, a black sweatshirt and "a do-rag or some type of nylon type of cap" (also called a "pantyhose mask"). These items were photographed, placed in sealed bags and impounded.

In trying to identify the robber, the police initially focused their investigation on Tiano Durham, a Lincoln Park gang member who was a suspect in other robberies. As the investigation progressed, however, the police eventually turned their attention to

Horn, who is also a member of the Lincoln Park gang. As part of the investigation, a detective went to Horn's residence in Temecula, told Horn he was investigating the robbery of the adult book store and obtained cells from which a sample of Horn's deoxyribonucleic acid (DNA) could be extracted.[2]

A police forensic investigator tested various items of evidence recovered by the police during their investigation of the robbery at the adult book store and compared DNA found on those items to DNA from known contributors, including Horn. When the investigator analyzed DNA on the do-rag (or pantyhose mask) found near the fence over which the robber jumped after fleeing the book store, she found a mixture from at least two individuals and determined Horn was the "predominant contributor." According to the forensic investigator, a "predominant profile is similar to a single source, which is a profile coming from one individual."[3] Horn's fellow Lincoln Park gang members, White and Durham, were excluded as contributors to the DNA found on the do-rag (or pantyhose mask). On the two gloves and the semiautomatic handgun the police

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[2] DNA is the genetic material in the nucleus of a cell responsible for the development and function of the cell. With the exception of identical twins, every person's DNA is unique. For a general description of DNA and forensic tests involving DNA, see *People v. Smith* (2003) 107 Cal.App.4th 646, 653-657.

[3] The police forensic investigator testified the probability of finding a match between the DNA on the do-rag (or pantyhose mask) that was consistent with Horn's profile and the DNA of a randomly selected person of Horn's race was one in 9,100,000,000,000,000,000. The investigator also testified the probability of finding a match with the DNA of a randomly selected person of another race was even less likely (by orders of magnitude).

recovered near the adult book store, the forensic investigator found DNA matching the profiles of Horn, White and Durham.

After obtaining these DNA test results, police officers traveled to Virginia to bring Horn back to California for prosecution. Horn had moved to Virginia shortly after the detective went to his house to obtain a DNA sample; while in Virginia, Horn had been arrested and had given the local police a false name.

B. *Discussion*

Horn contends the judgment must be reversed because the evidence was insufficient to sustain (1) any of his convictions, (2) the true findings on the firearm enhancements or (3) the true findings on the gang enhancements. Horn also contends the matter must be remanded for resentencing because the sentencing court abused its discretion in "rubberstamp[ing]" the prosecutor's recommendation. For the reasons explained below, we reject these contentions and affirm the judgment.

1. *Sufficient Evidence Supports All of Horn's Convictions and Enhancements*

a. *Standard of Review*

In considering a defendant's challenge to the sufficiency of the evidence to support a conviction or an enhancement, we examine the record as a whole to determine whether it contains evidence that is reasonable, credible and of solid value from which a rational jury could find beyond a reasonable doubt that the defendant committed the crime or that the enhancement allegation was true. (*People v. Clark* (2011) 52 Cal.4th 856, 942; *People v. Albillar* (2010) 51 Cal.4th 47, 59-60 (*Albillar*).) We do not reweigh the evidence, but, instead, defer to the jury's determinations of credibility and the truth or

falsity of the facts on which those determinations depend; and we presume in support of the judgment the existence of every fact the jury reasonably could deduce from the evidence. (*Clark*, at p. 943; *Albillar*, at p. 60.) Viewing the record in this light, we ask whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (*Jackson v. Virginia* (1979) 443 U.S. 307, 319.)

b. *Evidence Supporting the Convictions*

Horn's primary argument on appeal is that his convictions must be reversed because the evidence was insufficient to prove he was the perpetrator of the crimes at the adult book store. According to Horn, no witness was able to identify him as the perpetrator, and the People's case rested entirely on DNA evidence which he claims was unreliable. Specifically, Horn contends the prosecutor failed to establish a proper chain of custody for the items of evidence found by the police and analyzed for DNA by the forensic investigator, and that no evidence established the items found by the police were actually used in the robbery. We reject these contentions.

First, the fact that no witness was able to identify Horn as the person who robbed the adult book store does not require reversal. Direct evidence identifying a defendant as the perpetrator of a crime is not required to convict the defendant as long as circumstantial evidence establishes his guilt beyond a reasonable doubt. (*People v. Ekstrand* (1938) 28 Cal.App.2d 1, 3 (*Ekstrand*).) "Circumstantial evidence is as sufficient to convict as direct evidence." (*People v. Reed* (1952) 38 Cal.2d 423, 431.) Indeed, our Supreme Court has upheld convictions based on DNA evidence that identified a defendant as the perpetrator where, as here, the victim could not identify the

perpetrator because he wore "[a] stocking mask" made out of "pantyhose." (*People v. Soto* (1999) 21 Cal.4th 512, 516, 517 (*Soto*).)

Second, a proper chain of custody over the items of evidence analyzed for DNA was established at trial. The police officer who photographed the evidence at the crime scene and later impounded it described the procedure she followed in identifying and segregating the various items of evidence found by police. She placed the items in separate bags or boxes; assigned No. 3 to the do-rag (or pantyhose mask), Nos. 5 and 6 to the gloves, and No. 7 to the semiautomatic handgun; and then took the items to the property room for storage. The police forensic investigator later retrieved these numbered items from the property room, performed DNA tests on samples taken from them and reported the results that corresponded to each numbered item of evidence she tested. We therefore reject Horn's contention "the evidence fails to show the items [the forensic investigator] examined were the same items located near the bookstore."[4]

Third, the evidence introduced at trial was sufficient to show the items recovered by the police were used in the robbery. The handgun recovered near the adult book store

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[4] Horn correctly points out that police officers differed in their testimony about the specific model of the handgun recovered near the adult book store — the officer who found it described it as "a .40 caliber Glock handgun," but another investigating officer described it as "a Glock 9-millmeter." The record is clear, however, that both officers were testifying about the same handgun, i.e., the one found near the adult book store and assigned No. 7 by the officer who impounded the evidence.

Horn also correctly points out that at one point in her testimony, the forensic investigator confused the do-rag (or pantyhose mask) assigned No. 3 by the impounding officer with a similar item of evidence the police found in White's car. The investigator quickly corrected herself, however, and later made clear it was the do-rag (or pantyhose mask) assigned No. 3 that contained DNA matching Horn's profile.

matched Elliott's and Leon's detailed descriptions of the handgun wielded by the robber, and both witnesses were familiar with handguns based on military experience. The gloves found near the handgun were similar to those described by Elliott, who, like Leon, testified the robber wore gloves. Further, the do-rag (or pantyhose mask) and the plastic bag police found near the fence over which the robber jumped after fleeing the book store matched the descriptions of items Elliott and Leon testified the robber used. From the facts these items were all seen on the robber's person during the robbery and soon thereafter were found in areas through which the robber was seen fleeing, the jury reasonably could infer the robber used them in the robbery and discarded them during his getaway. (Cf. *People v. Miranda* (2011) 192 Cal.App.4th 398, 410-411 (*Miranda*) [jury could infer defendant possessed shotgun when defendant was in car from which objects were discarded during police pursuit and pieces of shotgun were later found along pursuit route].)

In sum, although no witness was able positively to identify Horn as the robber,[5] the finding of DNA matching Horn's profile on several items used by the robber, especially the finding that his DNA was the predominant profile on the do-rag (or pantyhose mask), constituted "powerfully incriminating evidence." (*People v. Johnson*

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[5] The general descriptions of the robber by witnesses who saw him as he fled the adult book store were consistent with Horn's appearance. Those witnesses described the robber as an African-American man who was five feet 10 inches to six feet tall; Horn is African-American and five feet 11 inches tall. This testimony supports an inference Horn was the robber. (Cf. *Ekstrand*, *supra*, 28 Cal.App.2d at p. 5 [eyewitnesses' testimony that robber was about height and build of defendant supported inference defendant was robber].)

(2006) 139 Cal.App.4th 1135, 1147 (*Johnson*).) This evidence, though circumstantial, was sufficient to support Horn's convictions. (See, e.g., *Soto*, *supra*, 21 Cal.4th 512 [affirming convictions based on DNA evidence even though victim could not identify perpetrator because he wore mask]; *Ekstrand*, *supra*, 28 Cal.App.2d at pp. 3-6 [jury could find defendant guilty of robbery and attempted robbery based on circumstantial evidence even though no witness could identify defendant as robber because he wore hood during robbery].)[6]

c. *Evidence Supporting the Firearm Enhancements*

Horn next contends the jury's true findings on the firearm enhancement allegations must be reversed for insufficient evidence. Focusing this argument on the DNA from multiple sources found on the handgun, Horn echoes the challenge he made to his convictions — the circumstantial DNA evidence was insufficient to prove he was the person who robbed the adult bookstore at gunpoint. According to Horn, because more than one person's DNA was found on the handgun, "only speculation could lead to a conclusion that [he] must have been the gunman." We disagree.

Horn's argument fails because it improperly focuses on the DNA analysis of the handgun found outside the adult book store and ignores all of the other incriminating evidence. In addition to the fact that DNA matching Horn's profile was found on the

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6 Other circumstantial evidence supporting an inference of guilt, totally ignored by Horn, include his unexplained and hasty departure for Virginia after police contacted him about the robbery and his giving of a false name to police when arrested there. (See § 1127c; *People v. Mason* (1991) 52 Cal.3d 909, 943; *People v. Olea* (1971) 15 Cal.App.3d 508, 515-516.)

handgun, the jury heard evidence that DNA matching his profile was found on the gloves recovered near the handgun, and that Horn's was the "predominant contributor" to the DNA found on the do-rag (or pantyhose mask), but no DNA matching the profile of either Durham or White was found on that item. Thus, Horn was the only person whose DNA was found on *all* of the items seen on the robber's person and analyzed by the forensic investigator. As we explained in rejecting Horn's challenge to the sufficiency of the DNA evidence to support his convictions, the finding of DNA matching Horn's profile on multiple items used by the robber was "powerfully incriminating." (*Johnson*, *supra*, 139 Cal.App.4th at p. 1147.) The presence of DNA from other contributors on *some* of the items of evidence, including the handgun, "was a consideration for the jury in weighing the evidence and determining the credibility and accuracy of the DNA test results." (*People v. Henderson* (2003) 107 Cal.App.4th 769, 773.)

Moreover, aside from the DNA evidence which Horn disparages, the jury heard other evidence linking him to the handgun used in the robbery at the adult book store. Elliott and Leon both testified the robber pointed a semiautomatic handgun at them and demanded they turn over the money in the cash register. The handgun they described in detail matched the handgun subsequently found by police outside the adult book store. Further, a police officer testified he saw the robber run out of the book store in the direction where the handgun was found, and the officer's description of the robber's race and height was consistent with Horn's. This evidence, when considered with the DNA evidence discussed above, supported the inference Horn used the handgun in the robbery and discarded it as he made his getaway. (Cf. *Miranda*, *supra*, 192 Cal.App.4th at

pp. 410-411 [jury could infer defendant possessed shotgun when defendant was in car from which objects were thrown out during police pursuit and pieces of shotgun were later found along pursuit route]; *Ekstrand*, *supra*, 28 Cal.App.2d at p. 5 [eyewitnesses' testimony that robber was about height and build of defendant supported inference defendant was robber].)

Accordingly, when "we review the entire record in the light most favorable to the judgment," we conclude the jury heard evidence that was "reasonable, credible, and of solid value" from which it could infer Horn wielded a semiautomatic handgun during the robbery of the adult book store. (*Albillar*, *supra*, 51 Cal.4th at p. 60.) This inference, in turn, supports the jury's true findings that Horn "personally use[d] a firearm" during the commission of the offenses of which he was convicted. (§§ 12022.5, subds. (a), (d), 12022.53, subd. (b); see *People v. Carrasco* (2006) 137 Cal.App.4th 1050, 1059 [personal use of firearm occurs when defendant displays firearm to intimidate victim and facilitate commission of crime].)[7]

d. *Evidence Supporting the Gang Enhancements*

Horn argues we must reverse the jury's true findings on the gang enhancement allegations attached to his convictions on counts 2 and 4 (assault with a semiautomatic

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[7] Our conclusion that sufficient evidence supports the jury's true findings on the firearm enhancement allegations means the assaults with a semiautomatic firearm of which Horn was convicted in counts 2 and 4 qualified as violent felonies. (See § 667.5, subd. (c)(8).) We thus reject Horn's argument that because those offenses were serious felonies, not violent felonies, the term of the enhancements of the prison sentences imposed on the convictions on counts 2 and 4 must be reduced from 10 to five years. (See § 186.22, subd. (b)(1)(B), (C).)

firearm) because the evidence was not legally sufficient to support the jury's findings the offenses were gang related. We disagree.

As an initial matter, we note that in making this argument, Horn has not cited to or discussed the evidence on the gang relatedness of the assaults, nor has he cited any statutes, cases, or other authority in support of his position. Such "[p]oints 'perfunctorily asserted without argument in support' are not properly raised." (*People v. Williams* (1997) 16 Cal.4th 153, 206.) In any event, as we shall explain, Horn's argument has no merit.

To establish the truth of a gang enhancement allegation, the People must prove beyond a reasonable doubt that the offense charged was "committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members." (§ 186.22, subd. (b)(1).) The gang relatedness of an offense may be proved by expert testimony. (E.g., *People v. Vang* (2011) 52 Cal.4th 1038, 1044, 1050, fn. 5; *Albillar*, *supra*, 51 Cal.4th at p. 63; *People v. Gardeley* (1996) 14 Cal.4th 605, 617.)

Here, the People called Scott Barnes, a detective with the San Diego Police Department assigned to the criminal street gang unit, to testify about the gang relatedness of Horn's crimes. Based on his two-and-a-half years investigating the Lincoln Park criminal street gang, Barnes testified the primary criminal activities of the gang include robbery, assault with a deadly weapon, drug sales and financial crimes. Barnes further testified Horn and White were both members of the Lincoln Park gang, and it is "very common" for gang members to share weapons. Finally, Barnes explained the

commission of a violent crime by a gang member, such as the armed robbery of the adult book store at issue here, enhances the reputation of the gang member and his gang by generating fear in rival gangs as well as in the community.

Barnes's expert testimony, when considered with the victims' testimony describing the crimes, the forensic investigator's testimony that Horn's and White's DNA were found on the handgun recovered outside the adult book store, and the testimony of the witnesses who heard Horn tell White to "go, go, get out of here" immediately after the robbery, supported an inference that Horn and White — both Lincoln Park gang members — were acting together in committing the crimes at the adult book store. This inference, in turn, was sufficient to support the jury's findings that the assaults with a semiautomatic firearm charged in counts 2 and 4 were "committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members." (§ 186.22, subd. (b)(1); see *Albillar*, *supra*, 51 Cal.4th at pp. 63, 68 [expert opinion that violent crime by gang member created fear in community is sufficient to raise inference that conduct benefited gang; "if substantial evidence establishes that the defendant intended to and did commit the charged felony with known members of a gang, the jury may fairly infer that the defendant had the specific intent to promote, further, or assist criminal conduct by those gang members"]; *People v. Morales* (2003) 112 Cal.App.4th 1176, 1198 [evidence one gang member committed crimes with other gang members and intended to commit the crimes was sufficient to support gang enhancement].) Accordingly, we must affirm those findings.

2. *The Sentencing Court Did Not Abuse Its Discretion*

Horn's final appellate argument is that the court abused its discretion in sentencing him. Horn complains the court simply "'rubberstamped' the prosecutor's suggestions for the harshest sentence possible on counts 2 and 4, resulting in a term of 78 years to life plus 60 years, likely more than any adult human can ever serve."[8] He asks us to reverse the sentence and remand the matter to allow the court to exercise its sentencing discretion properly. We decline the request.

As a threshold matter, we reject the People's argument, based on *People v. Scott* (1994) 9 Cal.4th 331, that Horn forfeited this claim of error. Under *Scott*, "complaints about the manner in which the trial court exercises its sentencing discretion and articulates its supporting reasons cannot be raised for the first time on appeal." (*Id.* at p. 356.) Here, Horn is not raising, for the first time, an objection to the sentence the court imposed. At the sentencing hearing, Horn's counsel argued for imposition of concurrent sentences of 25 years to life for the convictions on counts 2 and 4, rather than the consecutive terms of 78 years to life urged by the People. "The trial court was fully apprised of the basis for [Horn's] objection to the [maximum] term. Therefore, 'the principles of *Scott* were satisfied.'" (*People v. Hoover* (2000) 77 Cal.App.4th 1020, 1031.)

Turning to the merits, we agree with Horn that he is entitled to a sentencing decision based upon the court's informed discretion (e.g., *People v. Belmontes* (1983) 34

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8 Execution of the sentences imposed for the robbery convictions on counts 1 and 3 was stayed pursuant to section 654.

Cal.3d 335, 348, fn. 8), and that a sentencing court should never "rubberstamp" a prosecutor's suggested sentence, especially in cases involving serious and violent felonies (e.g., *People v. Andreotti* (2001) 91 Cal.App.4th 1263, 1275). Nevertheless, despite the sentencing court's poorly phrased remark that it was "probably going to just rubberstamp" the prosecutor's recommendation of Horn's sentence for the current convictions, we discern in the record sufficient indication that the court was aware of and properly exercised its discretion.

The court's discretion in sentencing Horn for the current offenses was limited, based on his three prior strike convictions, to two matters: (1) the selection of the minimum term of the indeterminate life terms that had to be imposed (see §§ 667, subd. (e)(2)(A), 1170.12, subd. (c)(2)(A) [specifying three methods to calculate minimum term and requiring court to impose greatest term calculated]); and (2) the decision whether to impose consecutive or concurrent sentences (see *People v. Lawrence* (2000) 24 Cal.4th 219, 222-223 [when defendant has two or more prior strikes, court has discretion to impose consecutive or concurrent sentences for current offenses committed on same occasion].) Under two of the methods specified by the Three Strikes law for calculating the minimum term, the court had to select among the three prison terms prescribed for assault with a semiautomatic firearm and for the attached firearm enhancement, and then use the selected terms in its calculations. (See §§ 667, subd. (e)(2)(A)(i), (iii), 1170.12, subd. (c)(2)(A)(i), (iii); *People v. Nguyen* (1999) 21 Cal.4th 197, 205-206 [in calculating minimum term of indeterminate sentence for third

strike conviction, court has discretion to select upper, middle or lower term for current offense].)

In calculating the minimum terms for the indeterminate sentences to be imposed for Horn's current convictions on counts 2 and 4, the court selected the upper term of nine years (§ 245, subd. (b)) and the upper term of 10 years for the attached firearm enhancements (§ 12022.5, subd. (a)).[9] Those choices were supported by multiple aggravating circumstances, several expressly mentioned by the court, including: (1) the violent nature of the crimes, especially White's shooting at a police officer (Cal. Rules of Court, rule 4.421(a)(1)); (2) Horn's use of a firearm in committing the offenses (rule 4.421(a)(2)); (3) his engagement in violent conduct (rule 4.421(b)(1)); (4) his extensive criminal record, dating back to 1995 and including imprisonment (rule 4.421(b)(2), (3)); and (5) his being on probation when the current offenses were committed (rule 4.421(b)(4)).

These same aggravating circumstances also supported the court's decision to impose consecutive sentences, provided the court did not use the same factor to impose both the upper term and consecutive sentences. (Cal. Rules of Court, rule 4.425(b)(1).) The court's decision to impose consecutive sentences was independently supported by the fact the assaults charged in counts 2 and 4 involved two victims, Elliott and Leon.

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9 The court had no discretion as to the length of the term of the gang enhancement or the enhancements for Horn's two prior serious felony convictions, which also factored into the calculation of the minimum terms of the indeterminate prison terms imposed for Horn's current convictions. (See § 667, subd. (e)(2)(A)(iii), 1170.12, subd. (c)(2)(A)(iii).) Those enhancements specify terms of 10 years and five years, respectively. (§§ 186.22, subd. (b)(1)(C), 667, subd. (a).)

(*People v. Calhoun* (2007) 40 Cal.4th 398, 408; *People v. Leon* (2010) 181 Cal.App.4th 452, 468.)

Accordingly, because only a single aggravating factor is required to impose the upper term or to impose a consecutive sentence (*People v. Osband* (1996) 13 Cal.4th 622, 728-729), the record amply supports the sentencing court's decision to impose maximum punishment on Horn. The court did not abuse its discretion.

DISPOSITION

The judgment is affirmed.

IRION, J.

WE CONCUR:

HALLER, Acting P. J.

O'ROURKE, J.