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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

JACOB EARL SANTANA,

Defendant and Appellant.

E053875

(Super.Ct.No. RIF152925)

OPINION

APPEAL from the Superior Court of Riverside County. Michael B. Donner,  
Judge. Affirmed.

Siri Shetty, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

Defendant is serving 25 years to life after a jury convicted him of conspiracy to commit murder, three counts of attempted murder, and three counts of assault with a firearm.

On the afternoon of October 1, 2009, defendant and his brother-in-law, Urbano Gonzalez, drove to the home of Cesar Saldana to test fire some .380-caliber handguns on the rear portion of Saldana's property. Saldana later told police officers that he saw defendant take two handguns and a box of ammunition out of the back of the car, and stick the two handguns in his waistband.

Luis Aguirre testified at trial to the following: after 8:00 p.m. later the same evening, defendant called Luis Aguirre and asked to buy some methamphetamine. Defendant said he did not want to drive out to Luis's home, so they met across the street from a store on Fourth Street in Perris. Luis's brothers Cesar and Evander went with him in his truck "because it was late." Defendant did not mention that Gonzales would be there. Luis had not seen Gonzalez in several months because Gonzalez had been out of town. Luis knew defendant through Gonzales, but not very well, and did not trust him 100 percent. Defendant was waiting at the Fourth Street location outside his car. Luis followed defendant to another, more remote location, at defendant's request. They drove for 15 to 20 minutes, turned off on a dirt road, and stopped in an open area near some hills and pepper trees. Both defendant and Luis got out of their vehicles. Cesar and Evander stayed inside Luis' truck. A man<sup>1</sup> came out from behind some trees about 55

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<sup>1</sup> The man was Urbano Gonzales.

feet away. The man took about 90 seconds to walk over to defendant, who was about 15 feet away from Luis, and stood next to defendant. The man had his face covered. Defendant told Luis, “come on, come on,” and the man started to shoot at Luis. Luis fell to the ground, rolled, and stood up to run. As he stood up, a bullet hit him in the back. Luis leaned up against a fence and looked over at his truck. The man with the gun was shooting at his brothers, who had gotten out of the truck. Cesar fell to the ground and Evander was hiding on the ground behind the truck. The man with the gun came running toward Luis as Luis ran away and shot at him again, using the last bullet. The man attempted to fire the empty gun at least one more time. At that point, defendant got in his car and tried to run over Luis. Defendant then reversed his car and tried a second time. The car hit Luis’s knee and a fence. Luis saw Evander drive Luis’s truck and run over the man with the gun. Evander put the truck in reverse and ran him over a second time. Defendant then drove off the property. All three brothers got into Luis’s truck and left as well.

### **DISCUSSION**

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, and he has done so. In his two-page supplemental brief, defendant argues that the court erred

when it allowed the People to impeach him with prior conduct involving moral turpitude from a juvenile adjudication. While a juvenile adjudication cannot be used to impeach a witness under Evidence Code section 788 because it is not a criminal conviction (*People v. Sanchez* (1985) 170 Cal.App.3d 216, 218-219), the conduct underlying a juvenile adjudication is admissible to impeach, provided it involves moral turpitude. (*People v. Rivera* (2003) 107 Cal.App.4th 1374, 1380-1382.) Here, the court ruled that the adjudication could not be allowed, but the behavior would be. This was permissible.

Defendant also argues that the trial court erred when it failed to dismiss a juror who expressed concern about her ability to concentrate. The juror found out during the presentation of the People's case that her sister's adult son had been arrested for assault, breaking and entering, and attempted murder. Near the close of the People's case, the juror told the court that she was concerned about "being able to concentrate solely on this case" because "[m]y family's a little bit upset, to say the least. And we're very worried for him." However, the juror replied, "yes," when the trial court asked if she would be "able to meet your duty as a juror, focus on what's being said—knowing that we're finishing today, focus on what's being said, evaluate and deliberate fairly?" The trial court's decision whether to discharge a juror for being unable to perform his or her duty is a matter of discretion. (*People v. Bradford* (1997) 15 Cal.4th 1229, 1348-1349.) On these facts, it is clear that the trial court acted within its discretion in taking at face value the juror's statement that she could be able to focus on the rest of the evidence and then deliberate fairly.

Defendant argues the court should have impeached the witnesses Luis and Cesar Aguirre “based on inconsistent statements prior to the trial and consistently through the trial.” Our review of the transcript shows that the defense attorney did thoroughly question these witnesses about their prior inconsistent statements to police about the incident, and discussions with each other, in an attempt to impeach their testimony.

Defendant argues the trial court erred when it denied a motion by the defense to admit evidence suggesting contributory culpability by the victims; namely, that they were long-standing drug dealers. The trial court ruled that the jury could hear evidence that all were present at the crime scene to conduct a drug deal. However, the trial court refused to allow additional evidence about the victims’ drug dealing activities or the defense to argue that the victims were in part culpable for their own injuries because they were drug dealers. This ruling was correct. A crime victim’s contributory negligence is not a defense. (*People v. Marlin* (2004) 124 Cal.App.4th 559, 569)

Defendant claims his conviction should be overturned because there was no physical evidence suggesting he was at the scene of the crime, and no physical evidence of a conspiracy between him and Gonzalez. However, defendant is perhaps unaware that circumstantial evidence may be sufficient to connect a defendant with a crime and to prove his guilt beyond a reasonable doubt. (*People v. Abilez* (2007) 41 Cal.4th 472, 504.) Here, the evidence linking defendant to the crime scene includes the following: First, both Luis and Cesar Aguirre testified that defendant was at the scene. Second, defendant’s sister, who was Gonzalez’s common-law wife, testified that defendant called her to come pick him up from a gas station. When she picked him up, he was very scared

and said he and Gonzalez had gone to purchase drugs from Luis Aguirre, but that the deal had gone bad. Defendant told her that Gonzalez had been run over with a car. This is sufficient evidence that defendant was present at the scene of the crime. Regarding the conspiracy, the evidence shows that defendant and Gonzalez tested their guns just a few hours before the shootings; that defendant lured the victims to a dark, secluded spot under the pretense of a drug buy without telling Luis that Gonzalez was going to be there; and that defendant had dropped Gonzalez off at that secluded spot before meeting with the victims in the City of Perris and directing them to follow him back to the secluded spot so Gonzalez could ambush and shoot them.

The People made reference at closing argument to a second gun, which was never found; presumably, a gun carried by Luis to the crime scene. Defendant appears to argue this was improper because there was no evidence presented that there was a second gun. However, there was evidence of a second gun. Cesar Saldana told a police officer that he had seen defendant remove two handguns from the vehicle and stick them in his waistband.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, 120-121, we have independently reviewed the record for potential error. We have now concluded our independent review of the record and find no arguable issues.

**DISPOSITION**

The judgment of conviction is affirmed.

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RAMIREZ  
P. J.

We concur:

RICHLI  
J.

MILLER  
J.