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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN VICTOR RAMIREZ,

Defendant and Appellant.

H038194

(Santa Clara County

Super. Ct. No. C1116573)

On the evening of September 24, 2011, Guadalupe Medina was selling tacos outside the S & S Market on Tenth Street at Williams Street in San Jose. Between 7:00 p.m. and 7:30 p.m., she saw defendant John Victor Ramirez and several other men go into the market. Defendant and one of his companions were Norteno gang members. Alejandro Ortega, a Sureno gang member, entered the market at about the same time. Inside the market, two of defendant's companions made derogatory comments to Ortega, taunted him, and made Norteno gang challenges. These activities were captured by the market's video camera and audio recorder. Defendant could not be seen on the video.

The men were in the market for about 10 minutes before Ortega came out followed by the other men including defendant. The men moved away from the market into a parking lot next to a nearby restaurant. Medina heard defendant yelling at Ortega and then she heard three or four gunshots. Medina saw that defendant had a gun in his hand and was standing close to Ortega. Ortega had been shot in the buttocks. Medina

saw defendant put the gun into his waistband, go north on Tenth Street, and enter a house at 441 South Tenth Street.

Medina called 911. She pointed out to police officers the house defendant had entered, and a perimeter was set up around the area of that house. One witness described the shooter to police as a Hispanic male in his twenties, 180 pounds, chunky, wearing a black sweater and jeans or khakis. At about 10:00 p.m., one of the officers patrolling the perimeter was approached by a bystander who told him that a “heavy Hispanic male” wearing dark clothing was behind the apartment complex at his location “acting suspicious.” This apartment complex was two buildings away from the house defendant had been seen entering. The bystander reported that he saw the man “jump over a fence” and “hid[e] behind cars and jump[] over dumpsters.”

The officer and the citizen walked toward the apartment complex, and the citizen pointed out the man he had seen, who was walking toward the carport area. This man, who was Hispanic and wearing dark clothing, was defendant. Defendant began “walking out in a fast walk.” The officer drew his gun and ordered defendant to “get on the ground.” Defendant took a couple more steps, looked around, and then complied.

After defendant was detained, the officer observed what he believed were “objective symptoms of being under the influence” of methamphetamine. He searched defendant’s pockets, found methamphetamine, and arrested him. Medina was brought to see defendant, and she identified defendant as the man she had seen with the gun. Defendant was advised of his constitutional rights and briefly responded to questions by two different officers before he was transported to the police station. None of the police officers who dealt with him observed any signs that he was under the influence of alcohol.

About nine hours after his arrest, defendant was interviewed at the police department. He said that the shooting came about because of a series of prior incidents in which he had been attacked or intimidated by Sureno gang members. After those

incidents, he obtained a gun. When he and two friends were at the market, a group of Surenos was verbally harassing them. Defendant responded by pulling up his shirt and exposing the gun in his waistband. The Surenos began to run away, and defendant chased after them. He pulled out his gun and fired it at the group of Surenos as they ran away. One of the Surenos was “straggling” behind the others, and this man turned and looked at defendant. Defendant then “focused his gun directly at” that man and fired three or four times. Meanwhile, defendant’s friend was yelling “Norte.” Defendant and his friend then ran away. Defendant was wearing a red belt and sporting Norteno gang tattoos at the time of the shooting. Analysis of defendant’s blood did not show that he was under the influence of methamphetamine or any other stimulant, although it did show that he was under the influence of alcohol when he was advised of his rights.

Defendant was held to answer after a preliminary examination. He was charged by amended information with attempted murder (Pen. Code, §§ 187, 664, subd. (a)) with premeditation and deliberation (Pen. Code, §§ 187, 189, 664, subd. (a)). The amended information also included gang (Pen. Code, § 186.22, subd. (b)(1)(C)), personal use of a firearm (Pen. Code, § 12022.5, subd. (a)), infliction of great bodily injury (GBI) (Pen. Code, § 12022.7, subd. (a)), and intentional discharge of a firearm causing GBI (Pen. Code, § 12022.53, subd. (d)) enhancement allegations.

Defendant moved to suppress his statements and other evidence on the grounds that his detention and arrest were unlawful. The court found that the detention and arrest were lawful and denied the motion. Defendant also sought to suppress his statements on the ground that his waiver of his constitutional rights was not knowing, voluntary, and intelligent and his statements were not voluntary. He argued that the police station interrogation occurred too long after the advisements and waiver to not require new advisements and a new waiver. Defendant also argued that he was too intoxicated at the time of the advisements to make a voluntary waiver. Finally, he argued that his statements were involuntary because the officers had lied to defendant and promised him

leniency. The court found that the waiver was knowing, voluntary, and intelligent, that the time lapse did not require readvisement, and that defendant's statements were not involuntary. Defendant also moved to dismiss under Penal Code section 995, but the court denied the motion.

Just before jury selection was to begin, defendant entered into a plea agreement under which he agreed to plead guilty to the attempted murder count and admit the gang allegation, the GBI allegation, and the personal use allegation in exchange for dismissal of the remaining allegations and an agreed prison term of 21 years. Defendant waived his rights and entered his plea and admissions. The court imposed the agreed term and dismissed the remaining allegations. Defendant timely filed a notice of appeal and obtained a certificate of probable cause. The court awarded the victim \$640 in restitution for lost wages.

Appointed appellate counsel has filed an opening brief which states the case and the facts but raises no issues. Defendant was notified of his right to submit written argument on his own behalf but has failed to avail himself of the opportunity. Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we have reviewed the entire record and have concluded that there are no arguable issues on appeal.

The judgment is affirmed.

Mihara, J.

WE CONCUR:

Premo, Acting P. J.

Grover, J.