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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>ABRAHAM GERONIMO,<br><br>Defendant and Appellant. | B277467<br><br>(Los Angeles County Super. Ct. No. BA443976) |

APPEAL from a judgment of the Superior Court of Los Angeles County, Kathleen Kennedy-Powell, Judge. Affirmed.

Benjamin Owens, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Ryan M. Smith, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Abraham Geronimo challenges his conviction for attempted premeditated murder. He argues that the record lacks sufficient evidence to support the conviction. We affirm.

## BACKGROUND

### 1. Amended Information

Defendant was charged with one count of attempted willful, deliberate, and premeditated murder. It was alleged that a principal personally used and discharged a firearm causing great bodily injury within the meaning of Penal Code section 12022.53, subdivisions (b), (c), (d) and (e)(1). Defendant also was charged with one count of assault with a firearm. A gang enhancement was alleged with respect to both charges.

### 2. Trial Testimony

The evidence viewed in the light most favorable to the judgment showed the following. (*People v. Jennings* (2010) 50 Cal.4th 616, 638.) On February 10, 2015, then 13-year-old Julio R. shot Esteban Pablo three times. Julio pointed the gun at Pablo when he fired. One bullet penetrated Pablo's leg, causing him injury.

Immediately prior to the shooting, Julio was with defendant, his fellow gang member. They were spray-painting a garage door, near Pablo's residence. Pablo went outside his residence to move his car, and Julio said to defendant, "Don't mess with me." During this interaction, defendant was "looking" and "keeping an eye out," and was acting as a "lookout."

Defendant waited for Julio. After Julio shot Pablo, defendant and Julio fled together. Deputy sheriffs found defendant and Julio shortly after the shooting at defendant's residence. They saw defendant discard a white shirt, and

inside the white shirt, they found the gun Julio had used to shoot Pablo. The gun had malfunctioned when a bullet remained stuck in the chamber. Julio discarded a shirt containing another firearm.

It was undisputed that defendant was a member of the Easy Riders 13 gang and that he was active in the gang. Defendant's moniker was Necio. Defendant and Julio were crossing out rival gang members graffiti when Pablo exited his residence and was shot.

A gang expert testified that older gang members often mentor younger gang members. According to the gang expert, juvenile gang members are encouraged to commit crimes because the consequences to them are less severe than those imposed on adult gang members. When gang members go "on a mission" it means that they are planning to commit crimes. When gang members go on a mission to cross out a rival gang's graffiti, the gang members are often armed. They arm themselves in anticipation of a confrontation with other gang members or with nearby residents. Gang members use violence to instill fear within the community.

**3. Aiding and Abetting Instruction**

Jurors were instructed that to prove a defendant is guilty of aiding and abetting, the People must prove: "1. The perpetrator committed the crime; [¶] 2. The defendant knew that the perpetrator intended to commit the crime; [¶] 3. Before or during the commission of the crime, the defendant intended to aid and abet the perpetrator in committing the crime; [¶] AND [¶] 4. The defendant's words or conduct did in fact aid and abet the perpetrator's commission of the crime."

**4. Judgment**

Defendant was convicted of all charges. He was sentenced to prison for life plus an additional 25 years to life for the enhancement. This appeal followed.

**DISCUSSION**

On appeal, defendant argues that there was insufficient evidence to support the crimes because "there was no evidence to suggest that [defendant] was aware of Julio P.'s [*sic*] capacity for deadly violence." Defendant further argues "nothing suggests a common purpose of killing." Defendant argues that his only purpose in being at the scene was to "stake a claim to territory with graffiti." Defendant acknowledges that he "presumably knew Julio P. [*sic*] was armed" but claims that he was ignorant Julio would "try to kill a bystander with no relation to a gang."

Attempted murder requires the specific intent to kill, and an aider and abetter must share that specific intent. (*People v. Lee* (2003) 31 Cal.4th 613, 623-624.) " '[A] person aids and abets the commission of a crime when he or she, acting with (1) knowledge of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages or instigates, the commission of the crime.' "[1] (*People v. Gonzales and Soliz* (2011) 52 Cal.4th 254, 295-296.)

" 'To determine whether there is substantial evidence to support a conviction we must view the record in a light most favorable to conviction, resolving all conflicts in the evidence

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[1] The natural and probable consequences doctrine is not implicated in this case.

and drawing all reasonable inferences in support of conviction. We may conclude that there is no substantial evidence in support of conviction only if it can be said that on the evidence presented no reasonable fact finder could find the defendant to be guilty on the theory presented.' " (*People v. Garcia* (2008) 168 Cal.App.4th 261, 272.) "[N]either presence at the scene of a crime nor knowledge of, but failure to prevent it, is sufficient to establish aiding and abetting its commission. [Citations.] However, '[a]mong the factors which may be considered in making the determination of aiding and abetting are: presence at the scene of the crime, companionship, and conduct before and after the offense.' " (*People v. Campbell* (1994) 25 Cal.App.4th 402, 409.)

Defendant's argument ignores the appropriate standard of review. Once the evidence is considered in the light most favorable to the judgment, ample evidence supported the judgment. Stated otherwise, defendant's argument that he was unaware of Julio's intent to use violence and more specifically of his intent to kill is not persuasive. Jurors could reasonably conclude that defendant knew of and shared Julio's intention.

Defendant did not "independently happen by the scene of the crime." (*People v. Campbell, supra*, 25 Cal.App.4th at p. 409.) Defendant and Julio armed themselves prior to going on a gang mission. It was common for an older gang member to mentor a younger gang member, and jurors could have inferred that defendant was mentoring Julio. Together they committed vandalism by spray painting a garage door. When Pablo exited his residence, Julio and defendant continued to act together as Julio shot Pablo and defendant acted as his

lookout. Julio pointed at Pablo as he shot multiple times. He stopped shooting when a bullet failed to leave the chamber. Defendant and Julio continued to act together after the shooting. They fled together and subsequently were found discarding firearms at defendant's residence. Based on this evidence reasonable jurors could infer defendant intended to aid and abet the killing and the assault with the firearm.

Defendant's argument that in other cases the aider and abettor spoke during a confrontation rather than acting only as a lookout does not show that the elements of aiding and abetting were not established in this case. Acting as a lookout is a method of aiding and abetting a crime. (*People v. Ketchum* (1960) 185 Cal.App.2d 615, 619.) As *People v. Garcia* explains: " '[T]he law imposes criminal liability upon all persons "concerned" in the commission of a crime. [Citation.] As a legal standard this provision creates what may be considered a "bright line" rule. If a person is "concerned" in the commission of a crime then he is guilty of that crime without assessment of the degree of his involvement otherwise. "Liability attaches to anyone 'concerned,' however slight such concern may be, for the law establishes no degree of the concern required to fix liability as a principal." [Citations.] A person is "concerned" and hence guilty as an aider and abettor if, with the requisite state of mind, that person in any way, directly or indirectly, aided the actual perpetrator by acts or encouraged the perpetrator by words or gestures.' " (*People v. Garcia, supra*, 168 Cal.App.4th at p. 272.) Here, defendant aided Julio by

acting as his lookout. His state of mind may be inferred from the circumstances.[2]

**DISPOSITION**

The judgment is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.

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[2] In a supplemental brief, defendant argues that this case should be remanded for resentencing. His argument is based on an amendment to Penal Code section 12022.53. His argument is not persuasive because the amendment is not yet effective.