People*v.*Piggee CA2/5, B245869 (Cal. Ct. App. 2014)

California Court of Appeal

**Filed:** March 11th, 2014

**Precedential Status:** Non-Precedential

**Citations:** None known

**Docket Number:** B245869

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Filed 3/11/14 P. v. Piggee CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, B245869

Plaintiff and Respondent, (Los Angeles County Super. Ct.

No. BA383909)

v.

JAMES EVANS PIGGEE,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, Anne H.

Egerton, Judge. Affirmed.

Joanna McKim, under appointment by the Court of Appeal, for Defendant and

Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney

General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews, Supervising

Deputy Attorney General, J. Michael Lehmann, Deputy Attorney General, for Plaintiff

and Respondent.

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A jury convicted defendant and appellant James Evans Piggee in count 1 of

second degree murder (Pen. Code, § 187, subd. (a)),1 willful, deliberate, and

premeditated attempted murder in count 2 (§§ 664/187), shooting at an occupied vehicle

in count 5 (§ 246), and unlawful firearm activity in count 6 (§ 12021, subd. (e)).2 As to

counts 1, 2, and 5, the jury also found the offenses were committed for the benefit of a

criminal street gang (§ 186.22, subd. (b)(1)(c)) and defendant personally used a firearm

(§ 12022.53, subds. (b), (c) [as to counts 1 and 2 only], (d) [as to counts 1, 2, and 5]).

Defendant admitted suffering a prior conviction within the meaning of the three strikes

law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). The trial court sentenced defendant

to a total of 169 years to life in state prison.

In this timely appeal, defendant argues the judgment should be reversed for the

following reasons: (1) the trial court erroneously allowed the prosecution’s gang expert

to opine that the driver of the vehicle used in the shooting was likely a member of

defendant’s gang; (2) the trial court committed prejudicial error in denying requested

instructions on voluntary manslaughter and attempted voluntary manslaughter based on

imperfect self-defense; (3) it was also prejudicial error to refuse to instruct on justifiable

self-defense; and (4) the evidence is insufficient to support the findings that the offenses

were committed for the benefit of a street gang under section 186.22. We affirm.

FACTS

On the morning of April 19, 2011, Daniel Orona picked up Rudy Nava from his

home in Orona’s gray Astro van. With Orona in the van were his two cousins, Rogelio

Gandara (Rocky) and Charles Thompson (Chucky). The four men, all members or

associates of the El Sereno gang, drove to California Herbal Remedies, a marijuana

dispensary located in a strip mall at 5470 Valley Boulevard, an area claimed by the

1 All statutory references are to the Penal Code, unless otherwise stated.

2 The jury was unable to reach verdicts on counts 3 and 4.

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Metro 13 gang. Nava exited the van when they arrived at the strip mall and began to

walk toward the dispensary to purchase marijuana.

Nava saw a man with a pistol get out of a parked white car. Nava continued

walking without saying anything. He heard yelling and looked back at the van, where

Orona and Gandara seemed to be looking at the car radio. Gandara was talking with

Orona and Thompson in the van when Gandara noticed a scared expression on Orona’s

face. Gandara ducked and closed his eyes. The van suddenly backed up and hit

something. Gandara got out of the van and ran to nearby apartments where he called his

aunt to pick him up. No one in the van ever pointed a gun at anyone, nor did they say

anything to anyone outside the van.

Nava tried to run into the dispensary when he saw the man with the pistol, but the

automatic door closed and he was unable to gain entry. Nava ran back toward the van,

hearing gunshots. He tried to jump into the van through the side door but was knocked to

the ground when the van unexpectedly went into reverse. Nava was eventually able to

get into the van when it came to a stop after colliding with something. Thompson was

still inside with Orona, who had been shot, but Gandara was gone. Orona drove a short

distance until Nava took over and drove him to the hospital, where Orona died from

multiple gunshot wounds.

Anthony Brown was a safety officer at the marijuana dispensary, which was

equipped with surveillance cameras that covered inside and outside the clinic, four of

which were displayed on a monitor. Brown heard gunshots from outside the dispensary

at around 12:30 p.m. He watched defendant, a Black male, shooting at the van. Brown

observed the van go into reverse and stop, while shots continued to be fired. Defendant

ran back to a white car in front of the clinic. As the van drove past the white car, Brown

saw defendant get out of the white car and fire additional shots at the van. Defendant

entered the white car from the front passenger side door. The driver was a male Latino.

When the white car started to leave the area, Brown opened the dispensary door with the

idea of taking down the license plate number, but Brown returned inside the dispensary

when defendant exited the car and came toward him. At that point, defendant reentered

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the white car, which left the parking lot. Brown identified defendant as the shooter from

a six-person photographic lineup, and in court at trial.

A second store in the area—Valley Foods Liquor at 5474 Valley Boulevard—also

had surveillance cameras covering the inside and outside of the store on the day of the

shooting. Sam Hamad, who worked at the store, knew defendant, who visited the store

weekly and identified himself as Shady. Other Metro 13 gang members from the

neighborhood also frequented the store. Hamad was aware defendant is the only Black

member of the otherwise Hispanic gang. Hamad heard gunshots in the parking lot

around 12:25 p.m. From a video monitor, Hamad saw a van back up into a pole. He

heard six or seven more gunshots. Hamad saw defendant on the video monitor.

Defendant was wearing the same clothes he had on when he came into the store earlier

that day. He also identified defendant on the video captured from the marijuana

dispensary and in a six-pack photographic lineup.

Police officers responded to the hospital where Orona had been taken. They

detained Nava and Thompson and took custody of Orona’s van. They recovered no

weapons from Thompson, Gandara, and Nava, or from the van. It appeared the van had

been struck with bullets 11 times, 9 times on the driver’s side.

Defendant was detained at his home by police officers on April 27, 2011. The

clothing he wore at the time of the shooting, as depicted in the videos, was recovered

from his bedroom. Defendant had a Metro PCS cell phone account. Calls were made

from defendant’s phone number using a cell tower located just north of Valley Boulevard

between 12:15 p.m. and 12:24 p.m. on the day of the shooting.

Officer Sergio Leyva testified as the People’s gang expert.3 The Metro 13 gang

has been in existence since the 1960s, with 49 documented members who are mostly

Hispanic. Defendant is the only Black member of the gang. Orona, Gandara, Nava, and

Thompson were members of the rival El Sereno gang (although Gandara denied this in

3 He testified as to the required predicate offenses by Metro 13 gang members, an

issue not in dispute on appeal.

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his trial testimony). Officer Leyva expressed the opinion defendant committed his crimes

to benefit, and in association with, the Metro 13 gang, and that the crimes promoted the

gang. The gang benefited because violent crime instills fear in rival gang members and

the community, discouraging citizens from contacting the police or testifying against

gang members. This type of violence establishes that the gang will retaliate against rival

gang members who enter their territory. The shooting was “in association with” the gang

because there was more than one person involved, and that person was more than likely

an associate of the gang. Defendant gained respect within the gang by killing Orona and

protecting the gang’s territory.

Defendant is the only known Metro 13 member with the moniker of Shady. There

is a “MySpace” account with a vanity URL of “Shady Metro x3” and an associated email

account of “Shady\_Metrox3@yahoo.com. The headline in the user profile reads:

“Shady Loco T3, Metro 13 Gang, 187 on Cerotes and Trash.” “Serrote” is a Spanish

derogatory term for excrement, used by Metro 13 members in reference to El Sereno

gang members. The “MySpace” account had uploaded photos depicting defendant and

other Metro 13 gang members displaying gang signs with their hands in photos entitled

“Me and the Homies” and “The Home Buzzard, Moreno and Me.” Defendant was

convicted of a felony prior to April 19, 2011.

DISCUSSION

I

Officer Leyva testified, over defense objection, that the driver of the white car was

likely a Metro 13 gang member. Defendant contends admission of this testimony was

error because there is no evidence the driver was a member of defendant’s gang. He

argues the error was prejudicial because the officer’s opinion tended to improperly

establish that defendant committed the offenses in association with a criminal street

gang, which implicated his right to a fair trial under the federal constitution. We need not

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discuss the merits of the contention,4 as the evidence overwhelmingly establishes that

defendant’s offenses were committed for the benefit of a criminal street gang, which is a

separate and independent basis for the gang enhancement, and the purported error was

therefore harmless under any standard of review.

“Section 186.22 adds various sentencing enhancements for gang-related felonies.

For purposes of the enhancements, subdivision (b)(1) of that section requires that the

felony be 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.’ This portion of section 186.22 requires proof of only two

elements: (1) that the defendant committed a felony for the benefit of, at the direction

of, or in association with any criminal street gang and (2) that he did so with the intent to

promote, further, or assist in criminal conduct by gang members. (People v. Albillar

(2010)

51 Cal. 4th 47

, 67 [(Albillar)].)” (People v. Mejia (2012)

211 Cal. App. 4th 586

,

613.)

Officer Leyva’s testimony the driver of the white car was likely a member of

defendant’s gang would arguably tend to prove one basis for the enhancement under

section 186.22, subdivision (b)—that defendant’s crimes were committed in association

with a criminal street gang. But here, there is overwhelming and uncontroverted

evidence that defendant’s offenses were for the benefit of a criminal street gang, a

separate and independent basis for liability under the gang enhancement statute. The

testimony defendant finds objectionable had no bearing on whether his offenses were

committed for the benefit of a criminal street gang.

4 We further note this one isolated piece of testimony played a trivial role in the

trial. The testimony was not even mentioned in argument to the jury. Moreover, the jury

was instructed at the time the answer was received, and again at the conclusion of the

trial, the officer’s opinion is only as good as the facts on which it is based, and the jury

was free to disregard any opinion based on facts not supported by the evidence. (See

Judicial Council of Cal. Crim. Jury Instns. (2011-2012) CALCRIM No. 332.)

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Gang rivalry is the only apparent reason for defendant’s violent conduct. The

Metro 13 and El Sereno gangs were engaged in a violent feud spanning several years.

The El Sereno gang members entered territory claimed by Metro 13 and were the subject

of an immediate violent attack by defendant, who is unquestionably a hardcore gang

member. As explained by Officer Leyva, protection of territory is a gang imperative, and

the presence of rival gang members is viewed as a challenge. Defendant’s crime

benefited Metro 13 by instilling fear in the community and in the rival gang members.

The shooting promotes the notoriety of the gang, and it serves as a warning of the dire

consequences to a rival gang entering territory claimed by Metro 13 territory. Citizens

will be less likely to call the police, testify, or identify gang members due to the

intimidation flowing from the gang’s violent acts. A gang member who shoots a rival

who enters the gang’s territory benefits the gang because “he’s doing his job. . . .”

The issue of whether the shootings were for the benefit of a criminal street gang

was not disputed at trial. Defense counsel never questioned the shootings were gang

related. To the contrary, counsel’s only argument to the jury admitted defendant was the

shooter and he was a gang member, but the crime was something less than the charged

offenses because of defendant’s knowledge of the ongoing rivalry between the gangs,

which caused him to act as he did when he came upon rival gang members in Metro 13

territory. Even the defense version of events acknowledged defendant acted for the

benefit of his gang when he saw the El Sereno gang members. Any error in admitting

Officer Leyva’s opinion that the driver of the white car was likely a gang member was

harmless. (Chapman v. California (1967)

386 U.S. 18

, 24; People v. Watson (1956)

[46](https://www.courtlistener.com/opinion/1444734/people-v-watson/)

[Cal. 2d 818](https://www.courtlistener.com/opinion/1444734/people-v-watson/)

, 836.)

II

In separate arguments, defendant contends the trial court committed prejudicial

error by refusing to instruct on imperfect self-defense and traditional self-defense. We

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treat the issues as one, because both theories suffer from the same evidentiary deficiency.

The instructions were properly denied.

Imperfect self-defense exists when a defendant killed another person because the

defendant actually, but unreasonably, believed he was in imminent danger of death or

great bodily injury; the killing is an offense no greater than voluntary manslaughter.

(People v. Manriquez (2005)

[37 Cal. 4th 547](https://www.courtlistener.com/opinion/2634864/people-v-manriquez/)

, 581 (Manriquez); In re Christian S. (1994)

[7 Cal. 4th 768](https://www.courtlistener.com/opinion/1189662/in-re-christian-s/)

, 771.) Thus, imperfect self-defense describes one type of voluntary

manslaughter, and the “trial court must instruct on this doctrine, whether or not

instructions are requested by counsel, whenever there is evidence substantial enough to

merit consideration by the jury that under this doctrine the defendant is guilty of

voluntary manslaughter. [Citation.]”

[(Manriquez, supra](https://www.courtlistener.com/opinion/2634864/people-v-manriquez/)

, at p. 581.)

Traditional self-defense exists when the defendant possessed both an actual and

reasonable belief in the need to defend. (People v. Stitely (2005)

[35 Cal. 4th 514](https://www.courtlistener.com/opinion/2626390/people-v-stitely/)

, 551

(Stitely); People v. Barton (2005)

[12 Cal. 4th 186](https://www.courtlistener.com/opinion/1127701/people-v-barton/)

, 199.) As with imperfect self-defense,

the defendant must have an imminent fear of danger to life or great bodily injury.

(People v. Butler (2009)

[46 Cal. 4th 847](https://www.courtlistener.com/opinion/2625727/people-v-butler/)

, 868;

[Stitely, supra](https://www.courtlistener.com/opinion/2626390/people-v-stitely/)

, at p. 551.) Instructions on

self-defense are not required absent supporting substantial evidence. (

[Stitely, supra](https://www.courtlistener.com/opinion/2626390/people-v-stitely/)

, at p.

551.)

Having examined the record, we conclude there is no evidence, let alone

substantial evidence, to support either theory of self-defense. The record shows that

shortly after Orona and the three others in his van arrived at the strip mall, Nava exited

the van and walked toward the marijuana dispensary. Defendant immediately confronted

Nava, armed with a pistol, and commenced firing. There is simply no evidence

defendant had an actual fear of imminent danger to his life or great bodily injury, as

required for both forms of self-defense.

Defendant contends the videotape shows Nava approached defendant, a rival gang

member, words were exchanged, and Nava reached into his pocket. This is inconsistent

with the trial court’s description of the videotape. We have examined all of the

videotapes and agree with the trial court that the record does not support defendant’s

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description of events. Nava testified he did not speak to defendant, and no contrary

testimony was offered by defendant. Moreover, even if some words were spoken, there

is no evidence as to what purportedly was said, and mere speculation does not constitute

substantial evidence.

Finally, we reject defendant’s suggestion that his subjective belief in the need to

defend what he perceived to be the territory of his gang created a basis for him to react

violently and thereafter rely on either perfect or imperfect self-defense. Defendant

argues, in part: “A rational jury could infer [defendant] thought an attack on his person

was imminent since that is what rival gang members do, attack members of opposing

gangs.” The law, understandably, does not countenance mitigation of culpability for

unprovoked acts of violence based on the purported norms of criminal street gangs.

III

Defendant’s final contention is the evidence is insufficient to support the finding

that the crimes were committed for the benefit of a criminal street gang. The contention

has no merit.

“The law regarding appellate review of claims challenging the sufficiency of the

evidence in the context of gang enhancements is the same as that governing review of

sufficiency claims generally. (See People v. Vy (2004)

122 Cal. App. 4th 1209

, 1224.)”

(People v. Leon (2008)

161 Cal. App. 4th 149

, 161.) “In considering a challenge to the

sufficiency of the evidence to support an enhancement, we review the entire record in the

light most favorable to the judgment to determine whether it contains substantial

evidence—that is, evidence that is reasonable, credible, and of solid value—from which a

reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.

(People v. Wilson (2008)

[44 Cal. 4th 758](https://www.courtlistener.com/opinion/2570544/people-v-wilson/)

, 806.) We presume every fact in support of the

judgment the trier of fact could have reasonably deduced from the evidence. (Ibid.) If

the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment

is not warranted simply because the circumstances might also reasonably be reconciled

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with a contrary finding. (People v. Lindberg (2008)

[45 Cal. 4th 1](https://www.courtlistener.com/opinion/2640351/people-v-lindberg/)

, 27.) ‘A reviewing

court neither reweighs evidence nor reevaluates a witness’s credibility.’ (Ibid.)”

(Albillar, supra

, 51 Cal.4th at pp. 59-60.)

“It has long been settled that expert testimony regarding whether a crime was gang

related is admissible.

([Albillar], supra

, 51 Cal.4th at p. 63; People v. Gardeley [(1996)]

14 Cal.4th [605,] 619.)” (People v. Vang (2011)

[52 Cal. 4th 1038](https://www.courtlistener.com/opinion/844245/people-v-vang/)

, 1050, fn. 5 (Vang).)

“‘Expert opinion that particular criminal conduct benefited a gang’ is not only

permissible but can be sufficient to support the . . . section 186.22, subdivision (b)(1),

gang enhancement.

([Albillar], supra

, 51 Cal.4th at p. 63.)”

[(Vang, supra](https://www.courtlistener.com/opinion/844245/people-v-vang/)

, at p. 1048.)

“Expert opinion that particular criminal conduct benefited a gang by enhancing its

reputation for viciousness can be sufficient to raise the inference that the conduct was

‘committed for the benefit of . . . a[] criminal street gang’ within the meaning of

section 186.22[, subdivision] (b)(1). (See, e.g., People v. Vazquez (2009)

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Cal. App. 4th 347

, 354 [relying on expert opinion that the murder of a nongang member

benefited the gang because ‘violent crimes like murder elevate the status of the gang

within gang culture and intimidate neighborhood residents who are, as a result, “fearful to

come forward, assist law enforcement, testify in court, or even report crimes that they’re

victims of for fear that they may be the gang’s next victim or at least retaliated on by that

gang”’]; People v. Romero (2006)

140 Cal. App. 4th 15

, 19 [relying on expert opinion that

‘a shooting of any African-American men would elevate the status of the shooters and

their entire [Latino] gang’].)”

(Albillar, supra

, at p. 63.)

As explained in part I of this opinion, Officer Leyva expressed the opinion crimes

such as defendant’s were committed for the benefit of a criminal street gang because they

instill fear in the community and in the rival gang members. Citizens will be less likely

to call the police, testify, or identify gang members due to the intimidation flowing from

the gang’s violent acts. This facilitates the commission of future crimes by the gang.

This type of violent conduct promotes the notoriety of the gang, and it serves as a lesson

to rival gang members that if they enter territory claimed by Metro 13, there will be

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retaliation in the form of a shooting. Officer Leyva’s opinion easily satisfies the

substantial evidence standard of review.

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

MOSK, Acting P. J.

MINK, J.\*

\* Retired judge of the Los Angeles County Superior Court assigned by the Chief

Justice pursuant to article VI, section 6 of the California Constitution.