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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE Plaintiff and Respondent, v. RICHARD LAWRENCE, Defendant and Appellant.	B266336 (Los Angeles County Super. Ct. No. TA136265)

APPEAL from a judgment of the Superior Court of Los Angeles County, Eleanor J. Hunter, Judge. Affirmed as modified.

David Y. Stanley, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews, Supervising Deputy Attorney General, and J. Michael Lehmann, Deputy Attorney General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Richard Lawrence (defendant) of first degree murder; multiple counts of willful, deliberate, and premeditated attempted murder; and shooting at an occupied vehicle. All of the charges concerned shootings that took place over the span of a month in an area of Compton known to be the territory of the Mona Park crips (Mona Park)—a street gang that is a rival of defendant's gang, the Anzac Grape crips (Anzac Grape). On appeal, defendant challenges only one of his attempted murder convictions, which was predicated on evidence he shot and injured a woman who was roughly 30 feet away from a Mona Park member who was shot and killed at the same time. We consider whether the conviction must be reversed because (1) there was insufficient evidence the woman was within a "kill zone" that would justify a jury finding of concurrent intent to kill, or (2) the trial court's jury instructions on the kill zone theory were legally deficient.

I. BACKGROUND

A. Charges

The Los Angeles County District Attorney charged defendant in an amended information with one count of murder (Pen. Code, § 187, subd. (a)),[1] four counts of willful, deliberate, and premeditated attempted murder (§§ 664, 187, subd. (a)), and one count of shooting at an occupied motor vehicle (§ 246). The charges correspond to shootings that occurred on April 5, April 26, and May 4, 2014, in the area of East 122nd Street and South Willowbrook Avenue in Compton, which is territory claimed by

[1] Undesignated statutory references that follow are to the Penal Code.

Mona Park. The District Attorney further alleged defendant was subject to various sentence enhancements, including allegations in all six counts that he personally and intentionally fired a gun, causing great bodily injury or death, and committed all the offenses for the benefit of, at the direction of, or in association with a criminal street gang: Anzac Grape.

B. The Offense Conduct

On the night of April 5, 2014, Erik Desarden (Desarden) was driving with his girlfriend, D'Anna Eleby (Eleby), when he parked Eleby's car on the south side of 122nd Street, about two buildings west from the intersection at Willowbrook Avenue. Desarden got out of the car to talk to some people he knew, about five or six men, who were standing in the street. Eleby also got out of the car and was standing at the back of the vehicle when she heard gunshots. Desarden was struck by multiple bullets and killed. The medical examiner who reviewed Desarden's autopsy report concluded he was not shot at close range but rather "at least three to four feet away to much further away." Eleby's car was struck with several bullets, all fired from the direction of Willowbrook Avenue, i.e., from east to west. There was evidence Desarden was a member of Mona Park.

Keisa Sims (Sims) lived on the north side of 122nd Street, approximately two buildings west of where Eleby's car was parked. She was hosting a party on the night of the shooting. At about the same time Desarden was talking with others in the street, Sims went outside in front of her house to tell some men standing in the street to either come inside or move away. As she approached the gate outside her residence, gunfire erupted, and the shots appeared to be coming from two men in hoodies

standing at the stop sign on Willowbrook Avenue, which was to the east of where she was standing.

Sims's boyfriend, Shanal Gray (Gray), who was standing near her at the time, grabbed and pushed Sims away when the shooting began, but a bullet struck Sims in the back. When the gunfire ceased, Sims saw the two men at the corner jogging quickly away. In Sims' estimation, she was standing about 27 feet away from where Desarden was shot when she herself was hit. She was acquainted with Desarden but she was not speaking with him or with the group he was in when the shooting began. Police later found 16 bullet shell casings at the scene of the crime and documented a bullet strike mark on a fencepost at the edge of Sims's property, between the driveway and sidewalk, which was about 195 feet away from the stop sign at Willowbrook Avenue.

Gray was not a member of the Mona Park gang and did not know Desarden. Gray saw two men wearing hoodies at the corner of 122nd Street and Willowbrook Avenue. He said the men "came around the corner firing" while simultaneously running westward in Gray's direction. Gray said he did not see the men shooting at any particular person, and none of the people in the street fired any guns at the two men before or after they started shooting. "They was just firing," according to Gray.

Three weeks after the shooting of Desarden and Sims, i.e., on April 26, 2014, Jesse Drumgole (Drumgole) drove with a friend to an apartment complex on Willowbrook Avenue between 121st and 122nd Street (just around the corner from the scene of the Desarden shooting) to buy marijuana. After making the purchase, Drumgole was backing his car out of the driveway next to the apartment building when a man started shooting at him

and his passenger, shattering the vehicle's front window. Drumgole ducked and kept driving, realizing at some point that bullets had hit him in the back of the head and on his right shoulder. At the hospital later that night, a police detective showed Drumgole an array of six photographs from which Drumgole identified defendant, whom he did not know, as the shooter.

Just over a week later, on May 4, 2014, Havon Williams (Williams) was in the vicinity of 119th Street and Willowbrook Avenue, walking home from a basketball game, when he heard gunfire. He turned around, saw a couple of people pointing guns, and started running. He was struck by a bullet in his buttocks. Williams claimed he could not identify the people shooting at him. There was evidence Williams was a member of the Mona Park gang.

C. Additional Testimony and Evidence Presented by the Prosecution at Trial

The prosecution called Demontrey Cunningham (Cunningham) as a witness at trial. He lived on the block where the shooting of Desarden and Sims took place, and his testimony linked defendant to all three of the shootings.[2] Cunningham had known defendant for about seven years; they were approximately the same age and had previously lived on the same street. After defendant moved out of the neighborhood, he became an "all star" member of Anzac Grape, which had developed a rivalry with

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[2] At the time of trial, Cunningham was serving time on a gun possession charge. He testified he received no special treatment or financial benefit from the government in exchange for his testimony.

Mona Park on account of a personal dispute between defendant and a member of Mona Park named Ohaji. Cunningham testified he associated with members of Mona Park but was not a member of the gang himself.

On the evening of April 5 (the night of the first shooting), Cunningham went to the party at Sims's house. Later, he was walking on the north side of 122nd Street toward Willowbrook Avenue, across from Desarden, when he saw a car pull up to the corner and defendant and another man got out. As he turned to walk in the other direction, he heard shots fired, saw defendant with a gun, and saw Desarden had been hit. Cunningham left the scene before authorities arrived, stating he did not want to give a statement because he was not part of the dispute between Anzac Grape and Mona Park and wanted "to leave that within their hood."

On the night of the April 26 shooting of Drumgole, Cunningham was on Willowbrook Avenue between 122nd and 123rd when he saw a car stop about 80 to 100 feet away, close to 122nd. Cunningham saw defendant exit the vehicle and start shooting at a car pulling out of an apartment building's parking structure. Cunningham had seen the victim's car when it initially pulled into the driveway and did not recognize it as belonging to a Mona Park gang member. After the shooting, Cunningham called 911 "because [the victims] were innocent and they had nothing to do with Mona" and because he was concerned about the number of shootings occurring near his home.[3] Cunningham identified himself using a pseudonym, but law enforcement officers ultimately ascertained his true name.

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[3] A recording of Cunningham's contemporaneous 911 call was played during trial.

As to the third shooting victim, Williams, Cunningham testified he knew Williams and Williams called Cunningham shortly after the shooting on May 4, 2014. According to Cunningham's account of that phone call, Williams said defendant had shot him on 119th Street.[4]

Forensic evidence linked all three shootings. The police collected shell casings from each of the crime scenes, finding .45 caliber and nine-millimeter casings at the location of the Desarden/Sims shooting, and .45 caliber casings at the locations of both the Drumgole and Williams shootings. The casings indicated the bullets were fired from semiautomatic pistols. A police criminologist testified the .45 caliber casings found at all three locations were fired from the same gun.[5]

The prosecution also called a gang expert witness, Los Angeles County Deputy Sheriff Joseph Sumner, to testify concerning the charged offenses. He opined defendant was a member of Anzac Grape, with a gang moniker of "Little Duss," based on admissions defendant had made to Sumner directly and in rap videos posted on YouTube.[6] Deputy Sumner also explained

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[4] Cunningham's testimony conflicted with Williams's testimony: Williams claimed he did not know and had never met or spoken with Cunningham.

[5] The nine-millimeter casings and bullets recovered from the scene of the Desarden/Sims shooting were all fired from a single weapon.

[6] One of these videos was played for the jury at trial. One of the lyrics in the video states, "All my gunners bang northeast," and Deputy Sumner explained the northeast reference referred to Mona Park because Mona Park territory was to the northeast of Anzac Grape territory. Another lyric in the video makes the

the gang concept of "going hunting," which referred to going on a mission to hunt rival gang members, possibly in rival gang territory.

In Deputy Sumner's opinion, given in response to a hypothetical question, an Anzac Grape member who went to the area of 122nd Street and Willowbrook Avenue—rival territory of Mona Park—to shoot up a party committed the shooting for the benefit of Anzac Grape. Deputy Sumner explained a shooting in rival territory would bolster the Anzac Grape shooter's reputation "because their rivals will know that these guys are willing to go up in their hood to commit that crime. So it makes even some of their enemies hesitant to deal with them." Deputy Sumner further testified that he would be of the same opinion for a shooting by an Anzac Grape member in Mona Park territory that targeted a Black person who was not a Mona Park gang member: "Once they go into rival territory, they don't know who's who, and they assume that that—if that person's there in that hood, they think they're from that hood. So they're going to shoot at them. It's very common. [¶] . . . [¶] They're going to assume that, if they're in Mona's territory, that they're somehow tied to Mona. They're going to shoot at them. It's done numerous times."

D. Argument and Instruction Concerning the "Kill Zone"

After the prosecution rested, defense counsel made a section 1118.1 motion to dismiss the attempted murder charge relating to victim Sims, arguing "she was far outside the kill zone." Counsel argued that based on the evidence, the charge

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animosity between the two gangs more explicit: "The Mona's mad at us, we be fuckin' on they bitches."

relating to Sims should instead be "assault with a deadly weapon or unlawful discharge of a firearm." The court denied defendant's motion but stated, "I have to say, I was kind of—my ears were a little bit listening for something more in connection with Ms. Sims. But once the—you know, she was shot, so obviously the bullets went that way. And then there was a strike mark right where she was. [¶] So while you might look at the span of the kill zone, for lack of a better term, as more narrow, she obviously was in it, because she was hit."

In summation, the prosecutor discussed the kill zone theory as it related to Sims as follows: "[T]his 'kill zone' idea, is he's going—he is not going after one specific person. He's going after a whole group of people. He knows that this is Mona Park territory. He sees all these Mona Park people. He wants to kill someone in their hood. And because he fires and they're within this kill zone—and we know they're within this kill zone because there's actually a strike mark within the kill zone and also because a bullet hits [Sims] and there's a whole group of people, that's what the kill zone is. So when she gets shot within that group, she's in the kill zone and that's why he's guilty of attempted murder for her. [¶] So even though he did not specifically say, 'I want to kill Keisa Sims,' he's still guilty because of the group that he is shooting at."

Defense counsel did not object to the prosecution's argument, nor did he explicitly address the kill zone in his closing argument. The closest he came to referring to the issue was in discussing Cunningham's location on the night of April 5 in order to challenge his identification of defendant: "He wasn't at the party, he was hanging outside, across the street from where [Eleby's] Passat was parked; right? We've got the car that gets

hit, the blue Passat. We see this measurement over where Ms. Sims and the bullet strike happened, where the party was at her house. We've got Mr. Cunningham somewhere over here. That's well over 100 feet. Are we getting over towards 150 feet?"

The trial court instructed the jury on the law of attempted murder using CALCRIM No. 600. The instruction as adapted to the facts of the case included language that would permit the jury to convict defendant of attempting to murder Sims not only as a direct victim, i.e., if he had the specific intent to kill her, but also if the jury found the kill zone theory of attempted murder applied. The instruction provided:[7] "To prove that the defendant is guilty of attempted murder, the People must prove that: [¶] 1. The defendant took at least one direct but ineffective step towards killing another person; AND [¶] 2. The defendant intended to kill a person. [¶] . . . [¶] A person may intend to kill a specific victim or victims and at the same time intend to kill everyone in a particular zone of harm or 'kill zone.' In order to convict the defendant of attempted murder of Keisa Sims, the People must prove that the defendant not only intended to kill a Mona Park crip but also either intended to kill . . . Sims, or intended to kill everyone within the kill zone. If you have a reasonable doubt whether the defendant intended to kill . . . Sims or intended to kill a Mona Park crip by killing everyone in the kill zone, then you must find the defendant not guilty of the attempted murder of . . . Sims."

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[7] The court's recitation of the instruction varied slightly from the instruction as written. We quote the written instruction. (*People v. Osband* (1996) 13 Cal.4th 622, 717 [generally, if a discrepancy exists between written and oral versions of jury instructions, the written instructions control].)

E. Convictions and Sentence

The jury found defendant guilty as charged on all six counts and found all sentence enhancement allegations true. The trial court sentenced defendant to an aggregate prison term of 210 years to life, calculated as follows: on the murder conviction, 25 years to life, plus another 25 years to life based on the section 12022.53, subdivision (d) finding that defendant personally used a firearm and caused great bodily injury or death; and on each of the four attempted murder convictions, 15 years to life, plus an additional 25 years to life based on the section 12022.53, subdivision (d) findings. Pursuant to section 654, the court stayed sentence on count five, defendant's conviction for shooting at an occupied vehicle.

II. DISCUSSION

Defendant contends there was insufficient evidence Sims was in a "kill zone" to support liability for attempted murder, asserting Sims was "a considerable distance" away from Desarden and there was no evidence to suggest she was a Mona Park gang member and, therefore, a target. He further contends the court's attempted murder instruction, which made reference to the kill zone theory, was erroneous because it was unsupported by the evidence, failed to define the term "kill zone," and did not state defendant must have harbored a *specific* intent to kill everyone within the vicinity of the intended target.

We reject both arguments. Considering the location of the shooting in Mona Park territory, the number of shots fired (16), Sims's proximity spatially and temporally to murder victim Desarden, and Deputy Sumner's expert testimony concerning an Anzac Grape member's motive to shoot anyone who might be

affiliated with Mona Park (regardless of actual gang membership), the jury had before it sufficient evidence to find Sims was a direct victim, i.e., defendant harbored a specific intent to kill her. Assuming for argument's sake, however, the jury relied on the kill zone theory to convict defendant, the evidence was equally sufficient—a rational jury could conclude beyond a reasonable doubt that defendant intended to kill a member of Mona Park and Sims was in the zone of people shot as a means of ensuring that intent was realized. As to the trial court's instruction on the kill zone theory itself, defendant forfeited his ability to challenge the instruction and the meritless challenges he has raised do not demonstrate the instruction adversely affected his substantial rights.

A. Sufficient Evidence Supports Defendant's Conviction for Attempting to Murder Sims

"'When considering a challenge to the sufficiency of the evidence to support a conviction, 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.' [Citation.] We determine 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citation.] In so doing, a reviewing court 'presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.' [Citation.] 'This standard applies whether direct or circumstantial evidence is involved.' [Citation.] '[I]t is well

settled that intent to kill or express malice, the mental state required to convict a defendant of attempted murder, may . . . be inferred from the defendant's acts and the circumstances of the crime.' [Citation.]" (*People v. Avila* (2009) 46 Cal.4th 680, 701.)

To be guilty of attempted murder, the defendant must have intended to kill the victim and not someone else. (*People v. Bland* (2002) 28 Cal.4th 313, 328 (*Bland*).) The theory of transferred intent, whereby a defendant accidentally harms someone other than the intended target, does not apply. (*Id.* at p. 317.)

There was substantial evidence on which they jury could have relied to find defendant specifically intended to kill Sims—not because of a pre-existing dispute, but because she was present at the time of the shooting in circumstances that would have suggested she might be affiliated with Mona Park. (*People v. Smith* (2005) 37 Cal.4th 733, 741 [direct evidence of a defendant's intent is rare; it must usually be derived from all the circumstances of an alleged attempted murder].) It is undisputed that Sims's house was located in Mona Park territory, and on the night of April 5, 2014, she was hosting a party for a group of people, some of whom were outside. Just before the shooting started, and further up the block, at least one acknowledged Mona Park member was in the street (Desarden), and another person who affiliated with Mona Park (Cunningham) was also in the area. Having heard Deputy Sumner's expert testimony, the jury could rationally find that when defendant—an Anzac Grape member—ran into the area with his confederate and started shooting, he intended to kill Mona Park gang members *and* anyone who was then in Mona Park territory and might have some connection to Mona Park. The evidence and expert testimony was more than sufficient to allow the jury to infer that

in the mind of an Anzac Grape shooter like defendant, everyone in the area was somehow tied to Mona Park and the more victims he shot, the more he would bolster his gang reputation. That the police recovered 16 shell casings only serves to reinforce such an inference—with so many shots fired, the jury had a factual basis to believe precisely what witness Gray said when asked if he saw who defendant and his accomplice were shooting at: "They was just firing. I didn't see them shoot at anybody. Just shoot—shots fired."[8]

Because there was substantial evidence on which the jury could have found defendant guilty of the attempted murder of Sims on a direct victim theory, defendant's challenge to the sufficiency of the evidence amounts to a claim that the jury was presented with a factually inadequate kill zone theory of attempted murder (coupled with another theory of liability we have found to be factually adequate). In such a situation, "[w]e will affirm 'unless a review of the entire record affirmatively demonstrates a reasonable probability that the jury in fact found the defendant guilty solely on the [allegedly] unsupported theory.' [Citation.]" (*People v. Perez* (2005) 35 Cal.4th 1219, 1233.) For the sake of argument, we will assume there is a reasonable

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[8] Indeed, an intent to shoot and kill individuals who were in Mona Park territory but were not actually Mona Park members is precisely what the jury found with its guilty verdict regarding the April 26, 2014, shooting of Drumgole. Drumgole was in the area of 122nd Street and Willowbrook Avenue to buy marijuana and there was no evidence he was a gang member. Defendant shot at him anyway, the jury convicted defendant of attempting to murder Drumgole (finding the associated gang allegation true), and defendant does not contest the sufficiency of the evidence to support that conviction and gang enhancement true finding.

probability the jury found defendant guilty on the kill zone theory, and not because he had the specific intent to kill Sims. We accordingly proceed to discuss the sufficiency of the evidence to support the kill zone theory of attempted murder.

If a defendant intends to kill a particular person, and in order to effectuate that purpose, shoots at a group of people that includes his target, the defendant can be found to have concurrently intended to kill both his intended target and everyone in the group, that is, everyone within the so-called "kill zone." (*Bland*, *supra*, 28 Cal.4th at p. 329.) The *Bland* opinion elaborates, quoting the Maryland Court of Appeals' decision in *Ford v. State* (1992) 330 Md. 682 [625 A.2d 984, 1000]: "'The intent is concurrent . . . when the nature and scope of the attack, while directed at a primary victim, are such that we can conclude the perpetrator intended to ensure harm to the primary victim by harming everyone in that victim's vicinity.'" (*Bland*, *supra*, at p. 329; see also *People v. Vang* (2001) 87 Cal.App.4th 554, 558, 563-564 [jury could reasonably infer defendants intended to kill all inhabitants of residences based on the large number of shots fired, wide span of damage inflicted, and use of high-powered weapons].) Thus, the kill zone theory is "simply a reasonable inference the jury may draw in a given case: a primary intent to kill a specific target does not rule out a concurrent intent to kill others." (*Bland*, *supra*, at p. 331, fn. 6.)

In support of his argument there was insufficient evidence defendant intended to kill Sims, defendant quotes *People v. McCloud* (2012) 211 Cal.App.4th 788, in which the Court of Appeal stated: "The kill zone theory . . . does *not* apply if the evidence shows only that the defendant intended to kill a particular targeted individual but attacked that individual in a

manner that subjected other nearby individuals to a risk of fatal injury. Nor does the kill zone theory apply if the evidence merely shows, in addition, that the defendant was aware of the lethal risk to the nontargeted individuals and did not care whether they were killed in the course of the attack on the targeted individual. Rather, the kill zone theory applies only if the evidence shows that the defendant tried to kill the targeted individual *by killing everyone in the area in which the targeted individual was located*." (*Id*. at p. 798.)

In determining whether the evidence of attempted murder on a kill zone theory was sufficient, much of the same evidence we have already discussed remains relevant. The conceptual difference between the kill zone theory and the theory of criminal liability where Sims herself was an intended victim reduces to the question of whether defendant intended to kill everyone he saw on 122nd Street or whether he was more discriminating, such that he intended only to kill actual members of Mona Park. The kill zone theory presumes the latter, and in our view, there was enough evidence for the jury to conclude defendant and his accomplice shot at anyone who was in Mona Park member Desarden's vicinity as a means of ensuring Desarden would be killed.

Sims estimated she was approximately 27 feet from the spot on where Desarden fell on the ground after being hit by a fatal bullet. That distance is not so great that we can say it would be irrational for a jury to find Sims was within a zone of people on the street that defendant intended to shoot to be sure he shot and killed Desarden. The prosecution presented evidence defendant and his accomplice did not fire upon Desarden at close range, but rather fired at least 16 bullets in what appeared to be

indiscriminate fashion. With this sort of blunderbuss approach, the nature and scope of the shooting strongly suggests defendant and his compatriot were intent on killing everyone nearby so as to leave no chance that Mona Park member Desarden would escape being shot and killed. (See *Bland*, *supra*, 28 Cal.4th at pp. 330-331 [jury could reasonably find defendant intended to kill not only intended target but all who were in the car with target when firing a "flurry of bullets"].)

The shooting scenario in this case was not one where Sims was separated from the intended victim by time or a physical barrier, or where she inadvertently inserted herself into a narrowly directed line of fire. The circumstances here therefore differ from those in *People v. Falaniko* (2016) 1 Cal.App.5th 1234 (*Falaniko*), in which an appellate court found insufficient evidence for a kill zone instruction as to certain charged counts of attempted murder. (*Id.* at p. 1244.) In *Falaniko*, and unlike here, the defendant shot several victims in a neighborhood park and, while walking away from the park, shot at a relative of the victims who was sitting in her car.[9] (*Id.* at pp. 1239-1240, 1244.)

Defendant nevertheless believes the kill zone evidence was insufficient because he was "apparently a very poor shot," which in his view "suggest[s] very strongly that Sims was hit by a poorly-aimed bullet rather than being a part of a focused kill zone." Even if we were to accept the contention that defendant was a poor shot, it would undermine, not reinforce, his sufficiency

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[9] Significantly, the *Falaniko* court had no trouble concluding "there was evidence that appellant and his cohort created a kill zone in the park" even though one of the victims shot in the park was "30 to 50 feet away" from another victim who was shot and killed. (*Falaniko*, *supra*, 1 Cal.App.5th at pp. 1239, 1244.)

of the evidence argument. Defendant's bad aim is further reason why the jury might rationally find he intended to shoot everyone he saw in the street—without the skill to precisely target Desarden, defendant would be relegated to attempting to kill everyone to be sure Desarden ended up (as he did) among the victims.

Returning to *McCloud*, the case cited by defendant, it too does not help his case. While *McCloud* correctly observes that the kill zone theory cannot apply if the evidence shows only that certain persons were merely endangered by the manner of an attack on an intended target, the facts of *McCloud* are not the facts here. (*McCloud*, *supra*, 211 Cal.App.4th at pp. 790-791, 801 [defendants who fired 10 shots into a large group of people at a party charged with 46 counts of attempted murder because prosecution argued "anyone who could have potentially been hit" was an attempted murder victim; kill zone theory held inapplicable].) True, the jury here might have rationally decided that Sims was not in a kill zone created by defendant, but on review for sufficiency of the evidence, we assess only whether there is substantial evidence to support the contrary finding we have assumed the jury made. (*People v. Smith*, *supra*, 37 Cal.4th at pp. 738-739.) There is substantial evidence, and we therefore reject defendant's sufficiency claims even assuming the jury's attempted murder verdict rested on the kill zone theory, and not on a finding that defendant specifically intended to kill Sims.

B. Defendant's Claims of Instructional Error Fail

Generally, we review an instruction to which the defendant failed to object in the trial court only if the instruction incorrectly stated the law (*People v. Hudson* (2006) 38 Cal.4th 1002, 1011-

1012) or affected the defendant's substantial rights (§ 1259; *People v. Scott* (2015) 61 Cal.4th 363, 400; *People v. Ngo* (2014) 225 Cal.App.4th 126, 149; see also *People v. Simon* (2016) 1 Cal.5th 98, 143 (*Simon*); *People v. Mejia* (2012) 211 Cal.App.4th 586, 617 [failure to request clarifying or amplifying language to instruction that otherwise correctly states the law forfeits later challenge]). Defendant did not object to the version of CALCRIM No. 600 as ultimately given by the trial court. We therefore review his claims only to determine whether his substantial rights were affected.

Defendant first argues it was error to instruct on the kill zone theory because that theory "was not applicable to the facts of this case." Because we have concluded substantial evidence supported defendant's conviction for Sims's attempted murder under a kill zone theory of concurrent intent, it follows the trial court was justified in instructing the jury on kill zone principles. (See *People v. Cole* (2004) 33 Cal.4th 1158, 1206 [if sufficient evidence supports jury finding that defendant committed crime under particular theory, sufficient evidence also supports instructing the jury regarding that theory].)

Defendant's second contention, that the trial court erred by not further defining the "kill zone" in its jury instructions, likewise fails. A court is obligated "to instruct sua sponte 'on those general principles of law that are closely and openly connected with the facts before the court and necessary for the jury's understanding of the case.' [Citation.]" (*Simon*, *supra*, 1 Cal.5th at p. 143.) The trial court was under no duty to provide a sua sponte definition of "kill zone" under that standard.

The principle of concurrent intent expressed in the kill zone theory is "not a legal doctrine requiring special jury instructions."

(*Bland*, *supra*, 28 Cal.4th at p. 331, fn. 6.) Having decided to instruct on the kill zone theory, the court was under no obligation to further define the phrase "kill zone" because the phrase does not "have a technical meaning peculiar to the law." (*People v. Estrada* (1995) 11 Cal.4th 568, 578; see also *id.* at p. 574 ["A word or phrase having a technical, legal meaning requiring clarification by the court is one that has a definition that *differs* from its nonlegal meaning"].)

Third and finally, defendant argues the jury may not have evaluated his guilt under the appropriate mens rea standard because the attempted murder instruction given used the terms "intend" and "intended" as opposed to "specifically intend" or "specifically intended." When we assess the adequacy of the jury instructions as a whole, the claim fails.

"It is well established in California that the correctness of jury instructions is to be determined from the entire charge of the court, not from a consideration of parts of an instruction or from a particular instruction. [Citations.] '[T]he fact that the necessary elements of a jury charge are to be found in two instructions rather than in one instruction does not, in itself, make the charge prejudicial.' [Citation.] 'The absence of an essential element in one instruction may be supplied by another or cured in light of the instructions as a whole.' [Citation.]" (*People v. Burgener* (1986) 41 Cal.3d 505, 538-539, disapproved on another ground in *People v. Reyes* (1998) 19 Cal.4th 743; see also *People v. Sattiewhite* (2014) 59 Cal.4th 446, 475 ["The relevant inquiry here is whether, 'in the context of the instructions as a whole and the trial record, there is a reasonable likelihood that the jury was misled to defendant's prejudice' [citation]"].)

Prior to instructing on the kill zone theory, the trial court advised the jury that the charges against defendant required "proof of the union, or joint operation, of act and wrongful intent." The court then described and drew a distinction between general intent crimes and specific intent crimes. It informed the jury that the charge of shooting at an occupied motor vehicle was a general intent crime and that the general intent standard was met if defendant intended to do the act even if he did not necessarily intend to break the law. With respect to specific intent crimes, the court instructed the jury as follows: "The following crimes and allegations require a specific intent or mental state: murder, attempted murder, gun and gang allegations. For you to find a person guilty of these crimes, that person must not only intentionally commit the prohibited act but must do so with a specific intent. The act and the specific intent required are explained in the instruction[s] for those crimes and allegations."

Defendant did not object to the trial court's instruction on specific intent, and he does not now demonstrate how the court's charge, viewed as a whole, misled the jury as to the mens rea standard applicable to defendant's attempted murder charge. "'We credit jurors with intelligence and common sense [citation] and do not assume that these virtues will abandon them when presented with a court's instructions. [Citations.]' [Citation.]" (*People v. Bragg* (2008) 161 Cal.App.4th 1385, 1396.) Here, no reasonable juror would fail to understand that the terms "intend" and "intended" in CALCRIM No. 600 referred to specific, not

general, intent as described in the court's instruction on union of act and intent.[10]

C. The Abstract of Judgment Must Be Corrected

The trial court orally stayed imposition of a prison term on count five, defendant's conviction for shooting at an occupied vehicle. The abstract of judgment, however, indicates the court simultaneously imposed and stayed a consecutive term on count five. Because the abstract conflicts with the court's oral pronouncement of sentence, it must be corrected. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) We order the abstract of judgment corrected accordingly.

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[10] Our conclusion is further supported by the fact that the jury found defendant guilty of "willful, deliberate, and premeditated" attempted murder. The court instructed the jury on the meaning of "willful, deliberate, and premeditated" immediately after instructing on kill zone principles with, in pertinent part, the following language: "The defendant acted willfully if he intended to kill when he acted. The defendant acted deliberately if he carefully weighed the considerations for and against his choice and, knowing the consequences, decided to kill. The defendant premeditated if he decided to kill before acting. [¶] . . . The test is the extent of the reflection, not the length of time."

DISPOSITION

The clerk of the superior court is to prepare an amended abstract of judgment that reflects defendant's sentence on count five is stayed pursuant to section 654, without any imposition of a consecutive prison term on that count of conviction. The judgment is affirmed in all other respects.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, J.

We concur:

KRIEGLER, Acting P.J.

KUMAR, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.