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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

LOUIS SANCHEZ EMANUEL,

Defendant and Appellant.

H049147

(Santa Clara County

Super. Ct. No. C1246799)

In 2015, a jury convicted Louis Sanchez Emanuel and his codefendant, Jacob Craig Whitley, of first-degree felony murder (Pen. Code, § 187, subd. (a)).¹ The trial court sentenced Emanuel to an indeterminate term of 25 years to life.

Emanuel filed a petition for resentencing under section 1172.6, alleging that his crime no longer constituted first degree murder under 2018 amendments to the felony murder law (Stats. 2018, ch. 1015, § 1, subd. (f); § 189, subd. (e)(3)).² Following an evidentiary hearing, the trial court denied Emanuel’s petition after finding that he was a major participant in the underlying crime and acted with reckless indifference to human life.³ On appeal, Emanuel challenges the sufficiency of the evidence to support the trial court’s findings. We affirm.

¹ Unspecified statutory references are to the Penal Code.

² Emanuel initially filed his petition under former section 1170.95. Effective June 30, 2022, former section 1170.95 was renumbered to 1172.6 without substantive change. (Stats. 2022, ch. 58, § 10.) For clarity, we refer to the statute as section 1172.6.

³ Emanuel’s petition for resentencing was heard by the same judge who presided over his trial.

I. FACTUAL AND PROCEDURAL BACKGROUND⁴

A. Procedure

On April 15, 2015, the Santa Clara County District Attorney filed a second amended information charging Emanuel and Whitley with one count of first degree murder (§ 187, subd. (a); count 1).⁵ After a trial, a jury convicted both men of first degree felony murder and found true the allegations that Whitley personally and intentionally discharged a firearm causing death (§ 12022.53, subd. (d)). In a bifurcated proceeding, the trial court found true Whitley's prior strike conviction and prior serious felony conviction allegations. The trial court sentenced Emanuel to 25 years to life in prison.⁶

B. Facts

1. The prosecution case

Mansour Amini and John Cody S.⁷ were friends who exercised and smoked marijuana together. Cody also sold marijuana to Amini numerous times.

⁴ This court granted Emanuel's requests for judicial notice of the trial record and this court's opinion in Emanuel's direct appeal, *People v. Whitley et al.* (H043651 (Nov. 22, 2019) [nonpub. opn.] (*Whitley*)), as well as the records in Emanuel's appeals from the trial court's earlier denial of his petition for resentencing in *People v. Emanuel*, H047062 and H047347. After the trial court granted Emanuel's petition for resentencing, we dismissed the appeals in H047062 and H047347 as moot.

We observe that both parties here rely on the factual summary contained in our prior opinion in *Whitley*. We derive our recitation of the procedural history of this case from our prior opinion, but our factual recitation is based on the trial transcripts. (See *People v. Clements* (2022) 75 Cal.App.5th 276, 292 (*Clements*).)

⁵ The operative information further alleged that Whitley personally used a firearm in the commission of the offense, resulting in the victim's death, and also that Whitley had a prior strike conviction (§§ 667, subds. (b)-(i), 1170.12) and a prior serious felony conviction (§ 667, subd. (a)).

⁶ The trial court sentenced Whitley to a total term of 80 years to life.

⁷ To protect the victim's privacy, we first refer to him by his given name and the first initial of his surname. In the rest of the opinion, we refer to the victim as Cody, the name used to identify him at trial. (See Cal. Rules of Court, rule 8.90(b)(4).)

About two weeks before Cody was shot, Amini was at the community college he attended, when Emanuel and Whitley approached him. Amini had never seen either man before.⁸ After initially saying they were thinking of enrolling, Emanuel told Amini they were looking to purchase a pound of marijuana. Amini said he could get that for them, but it would take a couple of weeks. Amini exchanged phone numbers with Emanuel.

Emanuel called Amini frequently over the next few days asking about the marijuana. Amini contacted several people who he thought might be able to supply a pound of marijuana and ultimately Cody said he could get that much for Amini. Cody said that Amini would receive \$200 for brokering the deal.

Amini and Cody met with Emanuel and Whitley at a restaurant to discuss the deal. Amini and Cody showed Emanuel and Whitley a sample of the marijuana. Emanuel took a photo of the sample and said he and Whitley planned to ship the pound of marijuana to their uncle in Las Vegas.

Emanuel offered to pay either \$2,200 or \$2,600 for the marijuana. Amini knew “there was something wrong” because a pound of marijuana sold for around \$1,800. Amini and Cody were “confused” by the offered price, and Amini “didn’t have a good feeling at that time” about the situation.

Two or three days later, Amini and Cody met with Emanuel and Whitley at the restaurant again. Emanuel and Whitley got into Cody’s truck and drove with him and Amini to Cody’s supplier’s house to pick up the marijuana. When they arrived, Emanuel and Whitley said they did not have the money for the marijuana.

Emanuel and Whitley asked which house belonged to the supplier, but Cody said the supplier would not meet with them unless they had the money. The men agreed to meet the following day, December 11, at a park to complete the deal.

⁸ Whitley told Amini his name was “Louis” although that was Emanuel’s first name, and also that Emanuel was his “cousin.”

On the morning of December 11, Amini and Cody exchanged numerous texts, including several angry messages from Amini when it appeared that Cody was backing out of the deal. Amini received a call from Emanuel and Whitley as well as text messages about doing the deal.

Cody picked up Amini, and they drove in Cody's truck to the park, arriving around 2:30 p.m. While in the truck, Cody showed Amini the pound of marijuana, packaged in a plastic bag inside a "Vans" shoebox. Amini called Emanuel's phone and spoke to Whitley, who said they were on their way and were around the corner.

While Amini and Cody were waiting in the truck, they started to argue about when they would smoke marijuana after finishing the deal. Cody suddenly threw Amini's gym bag out of the truck, spilling Amini's marijuana stash. Amini and Cody got out of the truck, and after Cody "got in [Amini's] face" for about a minute, Cody got in his truck and drove away.

Amini believed Cody was trying to cut him out of the marijuana deal. Amini called and sent multiple text messages to Cody inquiring about his whereabouts and the \$200 he was owed for the deal. Amini also texted and called Emanuel, but there was no response.⁹

Between 3:00 and 3:20 p.m., a witness heard what she thought was a gunshot, followed by the screeching of tires, and she saw Cody's truck traveling at high speed from one side of the street to the other. Cody "fell out and rolled down the street and landed in the gutter" before the truck collided with a tree. Another witness came out of her house after hearing screeching tires followed by a loud noise and thought there had been a car accident. She saw Cody's truck on the sidewalk against a tree and Cody face

⁹ Cody texted Emanuel's phone at 2:37 p.m., saying he was "at the park right now with it. We do this without this fool [Amini]. I'll get you for 21 instead of 22."

down on the ground, not moving. The witness called 911 and told Cody that she had summoned help. Cody was “moaning,” but not using words.

The forensic pathologist testified that Cody died at the scene from a close-range¹⁰ gunshot wound to the right side of his neck that perforated his carotid artery. Cody also had multiple blunt force injuries on his body, including an abrasion on his left forehead and other abrasions and lacerations on his head consistent with being struck by a solid blunt object. Cody would have lost consciousness within minutes of being shot.

Responding officers found blood in the vehicle as well as on the right front tire, wheel well, and front bumper. An accident reconstruction expert opined that, after falling out of the truck, Cody’s body was caught underneath it and dragged until it came to rest against the curb. Inside the truck, officers found an unusable amount of marijuana as well as an empty shoebox with the brand name “Supra.”¹¹

Around the time of the crime, Emanuel had an “on and off” relationship with Breanna Santos. Santos testified that she recalled being interviewed by police at least twice about the events surrounding the murder in December 2012. Santos, however, repeatedly claimed she could not recall what she said to police or anything that occurred the day of the shooting. Following a hearing outside the presence of the jury, the trial court found that Santos’s inability to recall was disingenuous and her testimony was “evasive to say the least.” The trial court then permitted one of the officers who interviewed Santos, San Jose Police Sergeant Stewart Davies, to testify about her statements during those interviews.

Sergeant Davies testified that he interviewed Santos twice, once on December 12, 2012 and again on December 14, 2012. Santos initiated the December 12 interview by

¹⁰ Based on the gunpowder stippling on Cody’s face, the barrel of the gun was within three feet of his face when it was fired.

¹¹ During his testimony, Amini was shown a picture of this shoebox and denied seeing it in Cody’s truck that day.

calling the police and voluntarily showing up at the police station. Santos explained she wanted to talk to the police because a phone registered in her name had been used by Whitley to “set something up” and the “text messages . . . would cause the police to come looking for her.”

During the December 12 interview, Santos told police that, on December 11 (the day of Cody’s death), Santos returned to Emanuel’s house to pick up their son around 4:00 p.m. Emanuel and Whitley were both there and Santos asked Whitley to return the phone. Whitley told her he had “shot a white boy” at a park, repeating “ ‘I shot him.’ ” three times. According to Santos, Emanuel confirmed that Whitley was telling the truth and had shot somebody.

Police asked Santos to return for a second interview on December 14. Based on their investigation, the officers believed that Santos had lied about Emanuel not being present at the shooting. At the December 14 interview, the police confronted Santos with phone records, and she admitted that Emanuel had her phone on December 11 and had not loaned it to Whitley on that day. She also said that Emanuel suggested telling police the story about Whitley having the phone.

Sergeant Davies testified further that, during the December 14 interview, Santos said she returned to Emanuel’s house around 5:00 or 5:30 p.m. When she arrived, Whitley and Emanuel were in Emanuel’s room and Whitley said, “ ‘I shot him. I shot him.’ ” Emanuel told Santos “ ‘[Whitley] did shoot him,’ ” and the shooting happened at the park. Santos asked Emanuel what happened, and Emanuel replied, “ ‘[Whitley] just shot him and then we came home.’ ” Emanuel also said “ ‘[t]hat shit was crazy.’ ”

When Santos asked Whitley why he shot the person, Whitley replied, “ ‘I don’t know. I don’t know. I shot him.’ ” Emanuel told Santos that Whitley “ ‘had set something up to meet a guy at Cherry Park . . . to get some weed.’ ” When Cody refused to give them the marijuana, Emanuel told Santos he told Whitley, “ ‘let’s go,’ ” but Whitley would not walk away. Whitley hit Cody with the gun to get him to let go of the

marijuana, and Cody started fighting back. Emanuel told Santos that “ ‘[Whitley] said he [was] pointing the gun down, he was trying to aim down, but the guy hit his hand, it went up and [Whitley] pulled the trigger and he said he shot him in his neck.’ ”

Emanuel told Santos that he asked Whitley, “ ‘What the fuck you doing?’ ” After the gun went off, Emanuel “started panicking,” and he and Whitley went to Emanuel’s house. When Santos “started panicking” about Whitley’s and Emanuel’s use of the phone that was in her name, Emanuel “ ‘started crying and saying that, “I didn’t do nothing, though. I didn’t do nothing.” ’ ”

Sergeant Davies testified Santos told the police that Emanuel and Whitley said “ ‘they got rid of the phone’ ” and suggested that Santos “ ‘report the phone lost.’ ” Santos told the police that Emanuel had had long dreadlocks when she dropped off their son with him that day, but when she returned that afternoon, he had cut off his dreadlocks.

Destinee Kindle testified that she was Whitley’s “[o]n, off” girlfriend in December 2012. On the evening of December 11, Whitley called Kindle and asked her to pick him up at Emanuel’s house. Whitley told Kindle that he and Emanuel were involved in a shooting and showed her a news story about the shooting. Whitley explained that he was trying to rob someone of marijuana, and accidentally shot him in the neck though he intended to shoot him in the foot. Whitley told Kindle that Emanuel was with him when the shooting took place.

Police interviewed Kindle on December 14, after Whitley was arrested at her house. On cross-examination, Kindle admitted that when police told her Whitley had shot someone, she pretended to be surprised by that because she “didn’t want to believe it [to be true].” Kindle told police that Whitley had not talked to her about the shooting.

2. The defense case

Whitley did not present any witnesses. Emanuel presented three witnesses but their trial testimony was not relevant to the issues addressed in the petition for

resentencing, i.e., whether he was a major participant in the offense and acted with reckless disregard for human life.¹²

C. The petition for resentencing

In December 2018, Emanuel filed a petition for resentencing under section 1172.6, alleging that the prosecution had proceeded on the theory that he was guilty of first degree felony murder, and he could no longer be convicted of first degree murder under the current law.¹³

The trial court issued an order to show cause, finding that Emanuel’s petition established a prima facie case for relief. Neither party presented new evidence. The trial court took judicial notice of the original trial record and based its ruling “on the evidence adduced at trial.” In a lengthy written order, dated January 12, 2021, the trial court denied Emanuel’s petition, finding he “was a major participant in the underlying robbery and that he acted with reckless indifference to human life.”

The trial court stated that Emanuel “was intimately involved in planning the robbery[] . . . was present at the scene[,] and was integral in setting up the marijuana sale at which he and Whitley planned to rob Cody.” “Of particular significance, . . . [Emanuel] was present at the scene of the robbery and murder[,] [and] . . . did nothing while Whitley pulled out a gun, hit Whitley [*sic*] over the head with it, and then shot him during the struggle.” After acknowledging that: (1) Emanuel did not use a gun; (2) no

¹² Emanuel presented an expert in social psychology and psychological factors related to police interrogation techniques, a police detective who testified about Amini’s identification of Emanuel, and Emanuel’s mother, who testified he was home at the time of the shooting.

¹³ The trial court initially denied Emanuel’s petition on the ground that Senate Bill No. 1437 was unconstitutional, and Emanuel appealed (H047062). After this court stayed the appeal in H047062 in order to allow the trial court to reconsider its ruling in light of new appellate authority upholding Senate Bill No. 1437’s constitutionality, the trial court vacated its prior ruling. This court then dismissed Emanuel’s appeal in H047062 as moot.

evidence showed he knew Whitley was armed prior to Whitley pulling out his gun; and (3) no evidence Emanuel knew Whitley was likely to use lethal force, the court concluded the evidence showed “there was at least a minimal period of time in which [Emanuel] was aware of the gun and in which he could have tried to prevent the shooting.” After the shooting, Emanuel “made no attempt to check if Cody was still alive, to render aid, or to obtain medical assistance.” The court also noted that Emanuel’s actions after the shooting were probative, as he “altered his appearance . . . disposed of [the] phone . . . used to communicate [with the victim] . . . [and] instructed Santos to lie to police” about that phone. Emanuel also “made no effort to assist the police in solving the crime, as he might have done if he did not condone Whitley’s actions.”

Emanuel timely appealed.

II. DISCUSSION

On appeal, Emanuel challenges the sufficiency of the evidence supporting the trial court’s findings that he acted with reckless indifference to human life. Viewing the evidence in the light most favorable to the judgment, we conclude that substantial evidence supports the trial court’s determinations.

A. Senate Bill No. 1437

Senate Bill No. 1437 (2017-2018 Reg. Sess.) amended the Penal Code “as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.” (Stats. 2018, ch. 1015, § 1, subd. (f); § 189, subd. (e)(3).)

Defendants convicted of murder based on the felony murder rule or the natural and probable consequences doctrine prior to passage of Senate Bill No. 1437 can now petition for resentencing on the ground that they could not be convicted of murder under the current version of the law. (*People v. Lewis* (2021) 11 Cal.5th 952, 957.) Upon a petitioner’s prima facie showing of entitlement to relief, the prosecution has the burden to

establish, beyond a reasonable doubt, that the petitioner is guilty of murder or attempted murder under a legally valid theory. (§ 1172.6, subd. (d)(3).)

We review a trial court’s factual findings in connection with a section 1172.6 petition for substantial evidence. (*Clements, supra*, 75 Cal.App.5th at p. 298.) Thus, “[w]e ‘ ‘examine 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 that would support a rational trier of fact in finding [the defendant guilty] beyond a reasonable doubt.’ ’ ” (*Ibid.*) That the circumstances might also reasonably be reconciled with a contrary finding does not warrant reversal of the judgment. (*People v. Thomas* (2017) 15 Cal.App.5th 1063, 1071 [defendant on substantial evidence review “bears an ‘enormous burden’ ”].)

B. Banks/Clark Factors

The California Supreme Court has sought to clarify the circumstances under which an accomplice who lacks the intent to kill may qualify as a major participant in *People v. Banks* (2015) 61 Cal.4th 788, 794 (*Banks*). The high court identified the relevant inquiry as including the following: “What role did the defendant have in planning the criminal enterprise that led to one or more deaths? What role did the defendant have in supplying or using lethal weapons? What awareness did the defendant have of particular dangers posed by the nature of the crime, weapons used, or past experience or conduct of the other participants? Was the defendant present at the scene of the killing, in a position to facilitate or prevent the actual murder, and did his or her own actions or inaction play a particular role in the death? What did the defendant do after lethal force used?” (*Id.* at p. 803, fn. omitted.) The *Banks* court clarified that “[n]o one of these considerations is necessary, nor is any of them necessarily sufficient” and that all the factors may be weighed to determine whether the defendant was a major participant. (*Ibid.*)

In *People v. Clark* (2016) 63 Cal.4th 522 (*Clark*), the California Supreme Court addressed the mental state of reckless indifference to human life, holding that it

comprises both subjective and objective components. (*Id.* at p. 617.) “The subjective element is the defendant’s conscious disregard of risks known to him or her. But recklessness is not determined merely by reference to a defendant’s subjective feeling that he or she is engaging in risky activities. Rather, recklessness is also determined by an objective standard, namely what ‘a law-abiding person would observe in the actor’s situation.’ ” (*Ibid.*) Factors to be considered—some of which overlap with those examined in *Banks*—include: (1) a defendant’s knowledge of weapons, use of weapons, and number of weapons; (2) a defendant’s physical presence at the crime and opportunities to restrain the crime and/or aid the victim; (3) the duration of the crime; (4) a defendant’s knowledge of his or her cohort’s likelihood of killing; and (5) a defendant’s efforts to minimize the risks of violence during the felony. (*Clark, supra*, at pp. 618-622; *In re Scoggins* (2020) 9 Cal.5th 667, 677 [applying *Clark* factors].) Like the factors considered in *Banks*, “ ‘[n]o one of these considerations is necessary, nor is any one of them necessarily sufficient.’ ” (*Clark, supra*, at p. 618.)

The high court in *Clark* acknowledged “the interrelationship” between major participation in an underlying felony and reckless indifference to human life. (*Clark, supra*, 63 Cal.4th at p. 614.) The two requirements significantly overlap, “ ‘for the greater the defendant’s participation in the felony murder, the more likely that he acted with reckless indifference to human life.’ ” (*Id.* at p. 615.)

C. Substantial evidence supports the trial court’s finding that Emanuel acted with reckless indifference to human life¹⁴

We conclude that there is sufficient evidence in the record that Emanuel displayed a reckless indifference to human life based upon the factors described by the California Supreme Court in *Banks* and *Clark*. As noted, the factors considered in determining

¹⁴ In his opening brief, Emanuel states that he is not contesting the trial court’s finding that he was a major participant in the robbery, so we do not analyze that part of the trial court’s ruling.

whether a defendant was a major participant and whether he or she acted with reckless indifference overlap, “ ‘for the greater the defendant’s participation in the felony murder, the more likely that he acted with reckless indifference to human life.’ ” (*Clark, supra*, 63 Cal.4th at p. 615.)

We acknowledge that some of the *Banks* and *Clark* factors are either neutral or do not support a finding of reckless indifference, such as Emanuel’s knowledge and involvement as to the use of weapons in the robbery, as well as his knowledge of Whitley’s likelihood of using deadly force. (*Clark, supra*, 63 Cal.4th at p. 618 [knowledge of weapons].) As did the trial court, we conclude there was no evidence in the record demonstrating that, prior to the robbery, Emanuel knew Whitley possessed a gun, would bring that gun to the robbery, or “was likely to use lethal force.” We therefore examine whether there is substantial evidence supporting one or more of the remaining *Clark* factors.

Both Emanuel’s physical proximity to the crime and opportunities to restrain the crime as well as aid the victim, support the trial court’s determination that Emanuel acted with reckless disregard for human life. The trial court could legitimately conclude that, as one who planned the robbery and was one of its intended beneficiaries, Emanuel had the ability to prevent it from happening or could have done more to prevent Whitley from shooting Cody. Although, according to Emanuel, he encouraged Whitley to let Cody keep the marijuana and walk away, it became apparent Whitley was ignoring his advice when Whitley struck Cody with his gun. There is no evidence that Emanuel made any further attempt to dissuade Whitley or intercede, perhaps by trying to take the gun from Whitley or distracting him so that Cody might have driven away. There is also no evidence that Emanuel made any effort to assist Cody, even by calling for an ambulance,

after the shooting itself.¹⁵ Instead, Emanuel joined Whitley in fleeing the scene and leaving Cody to his fate.

Substantial evidence also supports the trial court’s finding that Emanuel had an opportunity to minimize the risk of violence during the robbery itself but failed to do so. (*Clark, supra*, 63 Cal.4th at pp. 621-622 [defendant’s efforts to minimize risk of violence].) Although there is little evidence of how much time elapsed between Emanuel and Whitley meeting up with Cody and Whitley shooting him, Emanuel’s version of the events, as recounted in Santos’s police interview, implied there was some struggle over the marijuana before Whitley pulled out his gun, struck Cody with it, and then shot him. Emanuel had enough time to tell Whitley, “Let’s go” and even begin to walk away from the scene. Given Emanuel’s proximity to the scene, the trial court could have reasonably inferred that there was at least a brief window of opportunity for Emanuel to intervene or attempt to deescalate the violence. (*In re McDowell* (2020) 55 Cal.App.5th 999, 1014 [defendant had a brief but critical opportunity to intervene when accomplice fired a warning shot]; *In re Loza* (2017) 10 Cal.App.5th 38, 51 [defendant did not intervene when accomplice counted down for five seconds before shooting].)

Emanuel’s actions after he fled were also ambiguous at best—for example, he participated in covering up his involvement by throwing away Santos’s cellphone and cutting his hair. Yet it is unclear whether these actions demonstrated that he acquiesced or approved of Whitley’s use of lethal violence, or whether he simply wanted to avoid arrest. (*Clark, supra*, 63 Cal.4th at p. 620 [ambiguous circumstances surrounding defendant’s hasty departure make it difficult to infer frame of mind].) According to

¹⁵ There was no direct evidence as to whether Cody might have survived with immediate medical attention. The witness who came to the scene and called 911 could hear him moaning, and the forensic pathologist testified Cody would have lost consciousness in a “matter of minutes.” (See *In re Taylor* (2019) 34 Cal.App.5th 543, 560 (*Taylor*) [evidence that defendant did not know extent of victim’s injuries as well as no evidence victim would have survived had defendant acted otherwise does not support “reckless indifference” conclusion].)

Santos's interview with police, both Emanuel and Whitley were panicked after the shooting. "[E]ven if a defendant is unconcerned that a planned felony resulted in death . . . there must also be evidence that the defendant's participation in planning or carrying out the crime contributed to a heightened risk to human life." (*Taylor, supra*, 34 Cal.App.5th at p. 560.)

Considering the totality of the circumstances together, the trial court's determination that Emanuel acted with reckless indifference to human life is supported by the evidence that he (1) remained in close physical proximity to the crime; (2) did not take the opportunity to minimize the risk of violence during the robbery when Whitley pulled out a gun and Cody refused to give up the marijuana; and (3) failed to either render assistance to Cody or call for help after he was shot. Examining the evidence in a light most favorable to the judgment, we conclude that the trial court's determination that Emanuel was not eligible for relief under section 1172.6 because he "was a major participant in the underlying robbery and that he acted with reckless indifference to human life" was supported by substantial evidence.

III. DISPOSITION

The order denying Emanuel's petition for resentencing under Penal Code section 1172.6 is affirmed.

Wilson, J.

WE CONCUR:

Bamattre-Manoukian, Acting P.J.

Danner, J.

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