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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re J.C., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,
Plaintiff and Respondent,
v.
J.C.,
Defendant and Appellant.

A142282

(Sonoma County
Super. Ct. No. 37978-J)

The juvenile court sustained an allegation that minor J.C. (appellant) committed the offense of disturbing the peace and found true an additional allegation that the offense was committed for the benefit of a criminal street gang. On appeal, he contends there was insufficient evidence to support the street gang enhancement. We reject this contention and affirm the juvenile court’s orders.

FACTUAL AND PROCEDURAL BACKGROUND

Deputy Dylan Fong of the Sonoma County Sheriff’s Office was assigned to provide security at the Roseland Cinco de Mayo Festival in May 2014. He noticed a group of at least 20 Sureño gang members dressed in blue clothing and heard on his radio that Norteño gang members were arriving at the festival from the east. Deputy Fong saw appellant and two other males enter the festival from the east wearing red clothing. Appellant began pacing back and forth, displaying a gang hand sign, making eye contact

with the Sureños, and flashing the red soles of his shoes at them in a taunting manner. Deputy Fong interpreted appellant's actions as a promotion of the Norteño gang and a challenge to fight.

About an hour later, Deputy Fong was responding to a theft report when he was alerted to a fight. He went to the location of the fight, where he observed a large group of people yelling and screaming as well as people running in different directions. He spotted appellant in the crowd and saw him throwing his hands up in a challenging manner as he yelled a threat at another male. Deputy Fong placed appellant under arrest.

The Sonoma County District Attorney filed a juvenile wardship petition charging appellant with one count of disturbing the peace. (Pen. Code,¹ § 415, subd. (1).) The district attorney further alleged the offense was committed for the benefit of a criminal street gang, in violation of section 186.22, subdivision (d). The court sustained the allegations of the petition at a contested jurisdictional hearing. At the dispositional hearing, the court declared appellant a ward of the court and imposed various conditions of probation. This appeal followed.

DISCUSSION

Appellant's sole claim on appeal is that there was insufficient evidence to support the trial court's finding that the offense of disturbing the peace was committed for the benefit of a criminal street gang. More specifically, he contends the deputy's testimony was insufficient to establish that members of the Norteño gang had committed a sufficient number of predicate offenses to qualify as a criminal street gang. For reasons explained below, we disagree.

“In considering the sufficiency of the evidence in a juvenile proceeding, the appellate court ‘must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. We must presume in support of the judgment the existence of every fact the trier of fact could reasonably

¹All further statutory references are to the Penal Code unless otherwise specified.

deduce from the evidence [citation], and we must make all reasonable inferences that support the finding of the juvenile court.’ ” (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088–1089.)

Section 186.22, subdivision (d) provides for an enhanced penalty when a crime punishable as a misdemeanor or felony is 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” As set forth in subdivision (f) of section 186.22, in order “[t]o establish that a group is a criminal street gang within the meaning of the statute, the People must prove: (1) the group is an ongoing association of three or more persons sharing a common name, identifying sign, or symbol; (2) one of the group’s primary activities is the commission of one or more statutorily enumerated criminal offenses; and (3) the group’s members must engage in, or have engaged in, a pattern of criminal gang activity.” (*People v. Bragg* (2008) 161 Cal.App.4th 1385, 1399–1400.)

Appellant does not dispute that Deputy Fong’s testimony was sufficient to establish the first two elements needed to prove that the Norteños are a criminal street gang but argues that the deputy’s testimony with regard to the third element—the pattern of criminal gang activity—was conclusory and without foundation. Under subdivision (e) of section 186.22, a “ ‘pattern of criminal gang activity’ ” exists when members of a gang commit two or more enumerated offenses within three years and the offenses were committed either on separate occasions or by two or more persons. The enumerated offenses include crimes such as assault with a deadly weapon or by means of force likely to produce great bodily injury (§ 245, subs. (a)(1) & (4)), murder (§ 187), and robbery (§ 211). (§ 186.22, subd. (e)(1), (2) & (3).)

At the jurisdictional hearing, Deputy Fong testified as to three predicate convictions suffered by Norteño gang members that met the requirements of section 186.22, subdivision (e). First, he testified regarding a conviction for assault likely to produce great bodily injury (§ 245, subd. (a)(4)) suffered by Armando Monter arising from an incident that occurred on April 22, 2012. The deputy described the facts of the

offense and testified that Monter was a member of the Norteño gang. Deputy Fong further testified as to a conviction for assault with a deadly weapon (§ 245, subd. (a)(1)) suffered by Alejandro Guadarrama arising out of the same April 22, 2012 incident that gave rise to Monter's conviction. Deputy Fong stated that he had numerous contacts with Guadarrama and described him as a member of the Norteño gang. The deputy also testified regarding a conviction for assault with a deadly weapon (§ 245, subd. (a)(1)) suffered by Gustavo San Ramon, whom the deputy described as a member of the Norteño gang. Deputy Fong described the facts of the offense and stated that he knew San Ramon from previous contacts and from reading a certified record of the conviction. In each of the three cases cited by Deputy Fong, the prosecutor offered into evidence certified court records confirming the convictions. The records were received into evidence without objection. However, defense counsel objected to the deputy's testimony on hearsay grounds, arguing that it was unclear whether the deputy had personal knowledge of the prior convictions. The court overruled the objections.

Appellant argues that Deputy Fong's testimony that Monter, Guadarrama, and San Ramon were Norteño gang members who had committed offenses enumerated in section 186.22, subdivision (e) was unsupported by any foundation for the basis of his knowledge. We disagree.

In cases involving gang allegations, “[g]ang evidence, including expert testimony is relevant and admissible to prove the elements of the substantive gang crime and gang enhancements.” (*People v. Williams* (2009) 170 Cal.App.4th 587, 609.) “Expert testimony may be founded on material that is not admitted into evidence and on evidence that is ordinarily inadmissible, such as hearsay, as long as the material is reliable and of a type reasonably relied upon by experts in the particular field in forming opinions.” (*People v. Duran* (2002) 97 Cal.App.4th 1448, 1463; accord, *People v. Gardeley* (1996) 14 Cal.4th 605, 618) Gang experts may therefore rely on “information obtained from colleagues and other law enforcement agencies.” (*People v. Duran, supra*, at p. 1463.) Further, an official record of a conviction, such as a certified court minute order, may be used to establish a predicate offense under section 186.22, subdivision (e). (*People v.*

Duran, supra, at pp. 1459–1462; see Evid. Code, § 452.5, subd. (b)(1) [certified record of conviction admissible to prove commission of offense].)

Appellant largely relies on *In re Alexander L.* (2007) 149 Cal.App.4th 605 to support his argument that Deputy Fong’s testimony should be rejected. The case is inapposite. In *Alexander L.*, a gang expert testified that he knew the gang had been involved in certain crimes but did not offer any specifics. (*Id.* at pp. 611–612.) The appellate court held that the expert’s conclusory testimony could not be considered evidence as to the nature of the gang’s primary activities. (*Id.* at p. 612.) The court did not even reach the question of whether there was sufficient evidence of a pattern of criminal gang activity. (*Id.* at p. 614.) Although the court acknowledged that hearsay, if deemed reliable, could provide the basis for the expert’s testimony (*id.* at p. 612, fn. 3), the court concluded it was “impossible to tell whether his claimed knowledge of the gang’s activities might have been based on highly reliable sources, *such as court records of convictions*, or entirely unreliable hearsay.” (*Id.* at p. 612, fn. omitted and italics added.)

Here, unlike in *Alexander L.*, Deputy Fong’s testimony concerning predicate offenses and the individuals’ membership in the Norteño gang was based on reliable documentary evidence as well as his own personal experience with two of the three Norteño gang members who had suffered prior qualifying convictions. As an expert testifying on gang issues, the deputy was entitled to rely on certified records confirming the individuals’ gang membership and their convictions. The other cases relied upon by appellant are similarly distinguishable in that they involve circumstances where courts rejected expert testimony premised on unidentified or unreliable hearsay. (See *In re Nathaniel C.* (1991) 228 Cal.App.3d 990, 1003 [evidence of predicate offense was “nonspecific hearsay” consisting of vague, secondhand testimony]; *In re Leland D.* (1990) 223 Cal.App.3d 251, 258–259 [evidence of predicate offenses was based on hearsay from unidentified gang members and nonspecific information pertaining to arrests of purported gang members].)

Accordingly, we conclude there was sufficient evidence to support a conclusion that Norteño gang members had engaged in a pattern of criminal gang activity within the meaning of section 186.22, subdivision (e).

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

McGuiness, P.J.

We concur:

Pollak, J.

Jenkins, J.