

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

EDGARDO MORENO,

Defendant and Appellant.

B230341

(Los Angeles County
Super. Ct. No. NA081679)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gary J. Ferrari, Judge. Affirmed in part; reversed in part.

Marina J. Smerling, 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 and David F. Glassman, Deputy Attorneys General, for Plaintiff and Respondent.

Edgardo Moreno (appellant) was convicted in a court trial of two counts of first degree burglary (Pen. Code, § 459),¹ one count of making a criminal threat (§ 422), and one count of assault (§ 245, subd. (a)(1)). The court also found that each of the four crimes was committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(C)), and that appellant had suffered a prior conviction within the meaning of sections 1170.12, subdivisions (a) through (d) and 667, subdivision (a)(1). He was sentenced to 10 years in state prison. He appeals, contending there is insufficient evidence to support one of the burglary counts and the gang enhancement. We reverse the judgment as to count 2, and otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On March 20, 2009, Cecilia Estrada was at the home of her boyfriend, Leo Reyes, in Long Beach.² Appellant, Raul Aguilar, Victoria Lorenzana, and three others were at the house across the street. Estrada knew Aguilar and appellant and knew that they were members of the West Side Longos gang. Estrada's family members were West Side Longos, but Estrada was not. Aguilar and appellant said they wanted to speak with Estrada and she went across the street. Aguilar told her that he wanted her to have sex with one of his friends. Estrada refused and she was accused of "disrespecting" them. Aguilar said, "Don't forget who you're talking to." Appellant added, "You think you can talk to us like that?" Estrada felt threatened, so she returned to Reyes's house.

Later that day, appellant and the others came to Reyes's house. Aguilar asked Estrada to come outside, but she refused. Aguilar and another male came into Reyes's home and tried to drag Estrada outside. She resisted and she ended up in the living room. Appellant and the others entered the house and the group began hitting and kicking

¹ All further statutory references are to the Penal Code.

² Estrada testified at the preliminary hearing and trial. At trial, she said she could not recall the incident due to a seizure. The court took judicial notice of Estrada's preliminary hearing testimony.

Estrada. Two of the attackers had guns. One pointed his weapon at Reyes to keep him from becoming involved. As the beating continued, Estrada lost consciousness. When she came to, her attackers were still inside the house and Reyes was asking them to stop hitting Estrada. Appellant told Estrada, “You open your mouth to anybody[] and that will be the end of you.” She did not report the crime to the police.

Estrada went to the hospital. Her face was bleeding and swollen. She had difficulties with her vision, hearing, and breathing for five or six weeks following the assault.

On March 26, 2009, Estrada was interviewed by Long Beach Police Detective Bobby Anguiano.³ Estrada appeared frightened and in pain. Estrada gave Anguiano details of the attack that were generally consistent with her preliminary hearing testimony.

Long Beach Police Detective Hector Gutierrez testified at trial as a gang expert. He was familiar with the West Side Longos gang. Its primary activities were murder, robberies, terrorist threats, and witness intimidation. Several of Estrada’s attackers, including Aguilar and appellant, were West Side Longo members. Gutierrez opined that someone who does not show proper respect to gang members can face violent consequences. The use of violence against a disrespectful individual elevates the gang’s status, enhances the reputation of the attackers in the eyes of fellow gang members, and increases fear in the community.

Victoria Lorenzana was called as a defense witness. She testified that the fight was between her and Estrada because Estrada had a romantic interest in Aguilar. Aguilar was Lorenzana’s boyfriend and the father of her child. Lorenzana denied being a member of any gang and denied that Aguilar and appellant were gang members. She claimed the fight had nothing to do with gang membership.

³ Estrada testified that her grandmother contacted the police and reported the attack.

DISCUSSION

I. Sufficiency of the Evidence to Support Two Counts of Burglary

Appellant was charged and convicted of two counts of burglary. Count 1 alleged he entered the home of Leo Reyes and count 2 alleged he entered the home of Cecilia Estrada. Appellant contends there was evidence that he entered only one home, that belonging to Reyes. Thus, there was no basis for the second count of burglary.

The testimony of both Estrada and Lorenzana established that Estrada was inside Reyes's home. There was no evidence that anyone entered a home owned by Estrada. Estrada testified that appellant and his companions came into Reyes's house, pulled her into the living room, and hit her in the hallway. The People concede, and we agree, that appellant should have been convicted of only one count of burglary, the entry into Reyes's home as alleged in count 1. Thus, the judgment as to count 2 must be reversed.⁴

II. Sufficiency of the Evidence to Support the Gang Enhancement

Section 186.22, subdivision (b)(1) provides for a sentence enhancement for any person who is convicted of a felony 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."

Appellant concedes the evidence established that he was a gang member, but argues this is insufficient to prove that the burglary was committed for the benefit of the gang. He asserts that the burglary and subsequent assault were the result of a personal disagreement. Appellant argues there was no evidence of a gang confrontation or challenge prior to the commission of the crime. Nor was there evidence that a gang claimed credit for the assault after it occurred. Moreover, Estrada had ties to the West Side Longos and was not a member of a rival gang. Appellant points to testimony that

⁴ Because the court imposed a concurrent sentence for count 2, we need not remand the matter for a new sentencing hearing.

Estrada had a personal relationship with him and claims that the assault stemmed from a jealous disagreement with Lorenzana, not gang-related issues.

In evaluating the sufficiency of the evidence on a true finding on a gang enhancement, we view the record in the light most favorable to the judgment and draw all inferences from the evidence that support the finding. (*People v. Thompson* (2010) 49 Cal.4th 79, 113; *People v. Ortiz* (1997) 57 Cal.App.4th 480, 484.) We do not reweigh the evidence or redetermine issues of credibility. (*People v. Ferraez* (2003) 112 Cal.App.4th 925, 931.)

Estrada testified that the beating was due to her failure to afford the gang the proper respect when she refused to have sex with a person Aguilar had designated. After she refused, Aguilar told her, “Don’t forget who you’re talking to.” Appellant admonished her by saying, “You think you can talk to us like that?” The beating occurred shortly thereafter. Thus, there was ample evidence demonstrating that Estrada’s explanation of the motive for the attack was accurate.

The expert, Detective Gutierrez, explained that gangs feel the necessity to punish individuals who fail to show them proper respect. By beating Estrada, appellant and his cohorts enhanced their gang’s reputation for violence and instilled greater fear of the gang in the community. According to Gutierrez, by intimidating the people in the community, the ability of a gang to commit crimes without the fear of prosecution is enhanced because witnesses will remain silent. This fact was brought out best by Estrada. Following the assault, she refused to report the crime because she believed the gang had the ability to cause her greater harm. She was fearful of cooperating with the prosecution because of the gang’s power. At the preliminary hearing she tried to describe the reach of the gang by explaining, “I know what they’re all capable of, and they all know people” The prosecutor asked, “And when you say, ‘They know people,’ what kinds of people are you talking about?” She answered, “People on the streets that don’t like cops or anything.” When the prosecutor asked her to be more specific, Estrada said, “By you guys sending me here, you guys basically sentenced me to death. Either

way, I'm screwed." Nothing could better explain the gang's desire to gain and maintain its respect through violence and intimidation. Estrada's beating served that purpose.

Substantial evidence supports the trial court's conclusion that the crimes committed against Estrada were carried out for the benefit of the gang.

DISPOSITION

The judgment as to count 2 is reversed. The clerk of the superior court is directed to prepare an amended abstract of judgment and to send a copy to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.