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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ENRIQUE LIZARRAGA,

Defendant and Appellant.

2d Crim. No. B230635  
(Super. Ct. No. LA062644)  
(Los Angeles County)

Enrique Lizarraga appeals the judgment following his conviction for second degree robbery (Pen. Code, § 211),<sup>1</sup> illegal possession of a firearm (§ 12021, subd. (a)(1)), and illegal possession of ammunition (former § 12316, subd. (b)(1)). The jury found allegations to be true that he personally used a firearm in the offense (§ 12022.53, subd. (b)), and that the offense was committed for the benefit of a criminal street gang. (§ 186.22, subd. (b)(1)(C).) Lizarraga was sentenced to a 23-year term of imprisonment. He contends there was insufficient evidence to support the gang enhancement. We affirm.

FACTS

In July 2009 between 4:45 a.m. and 5:45 a.m., Jorge Valdez Hernandez drove with his wife to pick up his son, 18-year-old Jorge Valdez. Valdez was at his

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<sup>1</sup> All statutory references are to the Penal Code.

girlfriend's home near Valerio and Lennox Streets in Los Angeles. When he arrived, Hernandez got out of his truck to talk to the girlfriend's father. Valdez got into the front seat of the truck. A Camry car drove up and stopped. The driver of the Camry and Lizarraga, who was a passenger in the car, got out and approached Hernandez. Lizarraga was a member of the Valerio Street criminal street gang.

Lizarraga told Hernandez that Hernandez was in his "hood," the territory of "Valerio," and demanded that Hernandez leave the area. Hernandez said he had come to pick up his son and was just leaving. Lizarraga pulled out a semiautomatic gun and demanded money. Hernandez gave Lizarraga his wallet. When Lizarraga realized there was no money in the wallet, he again demanded money and pointed the gun at Hernandez's wife and son. Hernandez had \$1,500 in rent money in his pocket and gave it to Lizarraga. Lizarraga and his companion got back into the Camry and drove away.

Hernandez and Valdez identified Lizarraga as the robber with a gun. In a search of Lizarraga's home, police found a sawed-off .22 rifle and .22- and .38-caliber ammunition. Police also found gang graffiti for the Valerio Street gang and a list of gang members and their monikers.

## DISCUSSION

Lizarraga contends there was insufficient evidence to support the gang enhancement. He concedes membership in a criminal street gang, but argues that there was no substantial evidence that the robbery was committed "for the benefit of" the gang "with the specific intent to promote, further, or assist" criminal conduct by gang members. (§ 186.22, subd. (b)(4).) We disagree.

"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. [Citation.] We presume every fact in support of the judgment the trier of fact could have reasonably deduced from the evidence. [Citation.] 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 with a contrary finding. [Citation.] 'A reviewing court neither reweighs evidence nor reevaluates a witness's credibility.'" (*People v. Albillar* (2010) 51 Cal.4th 47, 59-60.)

A gang enhancement requires proof of the existence of a criminal street gang, and that the offense was "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." (§ 186.22, subd. (b)(4).) Testimony by an expert witness is admissible to prove these elements of the enhancement. (*People v. Albillar, supra*, 51 Cal.4th at p. 63; *People v. Garcia* (2007) 153 Cal.App.4th 1499, 1512.) But, an expert's opinion must be based on facts shown by the evidence, not on speculation or conjecture. (*People v. Gardeley* (1996) 14 Cal.4th 605, 617-618.) More than mere gang membership is required because gang members may commit a crime for reasons unrelated to the gang. (*People v. Castenada* (2000) 23 Cal.4th 743, 747; *People v. Morales* (2003) 112 Cal.App.4th 1176, 1198.)

Here, Los Angeles Police Officer Ralph Brown testified as a gang expert for the prosecution. He testified that he was familiar with the Valerio Street gang, that Lizarraga was a self-admitted member of the gang, and that the robbery was committed for the benefit of the gang. He based his opinion on evidence that (1) Lizarraga and an unidentified companion drove up to Hernandez and his family who were in the Valerio Street gang territory, and (2) Lizarraga called out the name of the gang immediately before committing the robbery. There was also evidence that Valdez had an encounter with Lizarraga in the same area six weeks earlier and that Lizarraga had claimed the neighborhood as Valerio territory at that time.

Officer Brown testified that this evidence supported his opinion that the robbery was gang related because gang members often commit crimes with "backup" so as to increase the intimidation effect of the crime. He also testified that gang members often call out the name of their gang, as in this case, to further instill fear and as a threat of retaliation if the victims report the crime to the police.

We agree that these factors permit an inference that the crime was committed for the benefit of the gang. (See *People v. Albillar, supra*, 51 Cal.4th at p. 63.) Although the evidence does not establish that Lizarraga's companion was a gang member, merely having him as a "getaway driver" indicates the crime was gang related. (*Id.* at pp. 60-61.) Also, his presence, as well as the identification of the gang by name, would tend to spread knowledge of the criminal activity to other gang members and the public and, thereby, increase Lizarraga's status in the gang. (*Id.* at p. 61.)

The gang enhancement also requires proof that the offenses were committed "with the specific intent to promote, further, or assist in any criminal conduct by gang members." (§ 186.22, subd. (b)(1).) Circumstantial evidence of intent is sufficient. "There is rarely direct evidence that a crime was committed for the benefit of a gang. For this reason, 'we routinely draw inferences about intent from the predictable results of action. We cannot look into people's minds directly to see their purposes. We can discover mental state only from how people act and what they say.' [Citation.]" (*People v. Miranda* (2011) 192 Cal.App.4th 398, 411-412.) If substantial evidence otherwise establishes that the offense was gang related, the jury reasonably may infer that the defendant had the specific intent to promote, further, or assist criminal conduct by gang members. (See *People v. Albillar, supra*, 51 Cal.4th at pp. 67-68.)

Lizarraga relies on *People v. Ramon* (2009) 175 Cal.App.4th 843, and *People v. Albarran* (2007) 149 Cal.App.4th 214, which involved different and distinguishable facts and, in the case of *Albarran*, a different legal issue. He also argues that the evidence supported the conclusion that Lizarraga was calling out the name of the neighborhood in which he lived, not the territory of his gang. Arguably, the evidence might be interpreted in this manner, but it certainly supports the conclusion that Lizarraga was referring to his gang rather than his address, especially in light of evidence that Lizarraga had used the Valerio name in a prior incident involving Valdez a few weeks earlier. Also, Lizarraga ignores the presence of a companion in the Camry. There is no evidence establishing that the companion was a member of the Valerio Street gang, but

the companion got out of the car and approached the victims with Lizarraga so as to be in a position to provide assistance if necessary.

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Joseph Brandolino, Judge  
Superior Court County of Los Angeles

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Kari E. Hong, under appointment by the Court of Appeal, for Defendant and Appellant.

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