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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re R.M., a Person Coming Under the
Juvenile Court Law.

B232252
(Los Angeles County
Super. Ct. No. YJ33366)

THE PEOPLE,

Plaintiff and Respondent,

v.

R.M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Irma J. Brown, Judge. Affirmed.

Holly Jackson, 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, Senior Assistant Attorney General, Stephanie A. Miyoshi and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

The juvenile court sustained the allegations of a petition filed by the District Attorney of Los Angeles County alleging that defendant and appellant R.M. committed an assault with a firearm (Pen. Code, § 245, subd. (a)(2)¹), and found true the petition's gang allegation (§ 186.22, subd. (b)(1)(B)). On appeal, defendant argues that the evidence was insufficient to support the juvenile court's true finding on the gang enhancement allegation. We affirm.

BACKGROUND

A. Factual Background

Los Angeles County Sheriff's Department Detective Albert Arevalo testified as the prosecution's gang expert, and opined that defendant and S.R. were South Los gang members. S.R. also testified that he and defendant were South Los gang members.

Detective Arevalo testified that the South Los gang's main rival is the Hoover gang. "Snoover" is a derogatory name for the Hoover gang. The rivalry goes back about 20 years and has recently been violent, with countless shootings and three murders within the prior year. S.R. testified that there have been "numerous shootings" between members of the South Los and Hoover gangs.

L.L. testified that he was formerly a Hoover gang member,² and on March 14, 2011, at approximately 10:30 a.m., he was walking in the area of 119th Street and Vermont Avenue. Detective Arevalo testified that this area was claimed by the South Los gang as their territory.

L.L. testified that defendant and S.R. approached him. L.L. recognized defendant, and L.L. believed defendant recognized him, because they had an incident a year earlier during which they exchanged words with each other. S.R. asked defendant, "Who is

¹ All statutory citations are to the Penal Code unless otherwise noted.

² Detective Arevalo testified that L.L. was still a Hoover gang member.

this?” Defendant told S.R., “He is from Snoover.” L.L. said, “I’m not with them no more. I’m not from no where [sic] . . .” L.L. also said, “I don’t bang no more. I’m not from Hoover.” S.R. said, “F that.” S.R. tried to grab L.L. but L.L. pulled away. S.R. grabbed L.L. again, took out a revolver, and told L.L. to “come with me.” L.L. pulled away again and ran. Defendant and S.R. chased L.L.

During the chase, defendant and S.R. caught up with L.L. three times. During the first incident, one of them grabbed L.L. from behind by the hood of his sweatshirt. L.L. turned around, and S.R. punched L.L. in the mouth. Defendant began throwing punches at L.L., and L.L. fought back. L.L. pulled away and ran again. During the second incident, L.L. was on his cellular telephone calling the police because he felt he was going to be killed. Defendant and S.R. began hitting L.L. in the face with their fists. L.L. fled again. During the third incident, as defendant and S.R. began hitting L.L. again, the police were in the area and defendant and S.R. ran away. L.L. suffered a cut to his mouth.

Los Angeles County Sheriff’s Department Deputy Joe Medina testified that at about 10:30 a.m., he was driving on Vermont Avenue and saw defendant and S.R. punching L.L. Deputy Medina turned his vehicle around but lost sight of them until he saw them again in a parking lot. L.L. was trying to back away from defendant and S.R. Deputy Medina lost sight of them again as he was attempting to turn his vehicle into the parking lot until he saw defendant and S.R. running away. After Deputy Medina spoke to L.L. for about a minute, and thereafter detained defendant and S.R. approximately 300 feet from where he spoke to L.L.

Detective Arevalo testified that the South Los gang has an “unwritten rule” that its gang members must assault any rival gang member who is in their territory. The South Los gang members commonly carry guns.

B. Procedural Background

The District Attorney filed a petition alleging that R.M. came within the provisions of Welfare and Institutions Code section 602 because R.M. committed an

assault with a firearm in violation of section 245, subdivision (a)(2). It was also alleged that the offense was a serious felony pursuant to section 1192.7, subdivision (c)(28). In addition, it was alleged that defendant committed the offense for the benefit and direction of, and in association with a criminal street gang, with the intent to promote, further and assist criminal conduct by gang members within the meaning of section 186.22, subdivision (b)(1)(B).

At the adjudication hearing, the juvenile court sustained the petition and found true the gang allegation (§ 186.22, subd. (b)(1)(B)). The juvenile court declared the offense to be a felony, placed defendant in camp and ordered that the maximum term of confinement was 13 years, 6 months.

DISCUSSION

Defendant contends that there is insufficient evidence to support the juvenile court's true finding on the gang enhancement allegation because the evidence failed to establish the primary activities of the South Los gang. We disagree.

A. Background Facts

Detective Arevalo, the prosecution's gang expert, testified that he had been a sworn peace officer for over 12 years, and was assigned to the gang investigation unit of the Los Angeles County Sheriff's Department. He was in charge of investigating the South Los gang, which had been active for 35 years and had three or more members.³ Detective Arevalo investigated "hundreds" of cases of criminal activity involving South Los gang members, including assaults and robberies. The gang investigation unit had interviewed "hundreds" of members of the South Los and Hoover gangs and local citizens, and Detective Arevalo reviewed the gang investigation unit's documentation.

When the prosecutor asked Detective Arevalo how he knew defendant, Detective Arevalo responded, "I have other cases that I've filed and that are pending ranging from

³ A requirement under section 186.22, subdivision (f) for a "criminal street gang" is it must be comprised of "three or more persons."

gang loitering, weapons possession, vandalism, which I assisted CHP in a vandalism case where [defendant] was arrested with the other minor vandalizing the freeway.” Detective Arevalo had contacts with defendant and his family, and he personally knew that defendant’s older brother, a deceased younger brother who was killed in a gang-related shooting, and mother were South Los gang members.

Detective Arevalo testified that on February 8, 2011, L.R., a South Los gang member, was convicted of attempted murder. Detective Arevalo investigated that case. On September 1, 2008, J.R. was convicted of possession of an illegal firearm. Detective’s partner investigated that case, and it was “documented” that J.R. was also a South Los gang member.

Based on a hypothetical question closely tracking the facts introduced at the adjudication hearing, Detective Arevalo opined that the crimes were committed for the benefit of, at the direction of, or in association with the criminal street gang. In response to the prosecutor’s question to identify the South Los gang’s primary gang activities, Detective Arevalo testified, “It runs the gamut from vandalism, possession and sale of narcotics, assault, assault with deadly weapons, robbery, attempted murder, [and] murder.”

B. Standard of Review

On an appeal challenging the sufficiency of the evidence to support a juvenile court judgment sustaining the allegations of a petition, the appellate court “must apply the same standard of review applicable to any claim by a criminal defendant challenging the sufficiency of the evidence to support a judgment of conviction on appeal.” (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371.) ““In reviewing the sufficiency of evidence under the due process clause of the Fourteenth Amendment to the United States Constitution, the question we ask is “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.”” ([*People v.*] *Rowland* [(1992)] 4 Cal.4th [238,] 269) We apply an identical standard under the California Constitution. (*Ibid.*) ‘In

determining whether a reasonable trier of fact could have found defendant guilty beyond a reasonable doubt, the appellate court “must view the evidence in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” (*People v. Johnson* (1980) 26 Cal.3d 557, 576 [162 Cal.Rptr. 431, 606 P.2d 738].)” (*People v. Young* (2005) 34 Cal.4th 1149, 1175.) The substantial evidence “standard applies to a claim of insufficiency of the evidence to support a gang enhancement. [Citation.]” (*People v. Vy* (2004) 122 Cal.App.4th 1209, 1224.)

C. Analysis

Section 186.22, subdivision (f) defines “criminal street gang,” as relevant here, to mean “any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of [certain enumerated] criminal acts” (§ 186.22, subd. (f); see *People v. Sengpadychith* (2001) 26 Cal.4th 316, 323 (*Sengpadychith*)). “The phrase ‘primary activities,’ as used in the gang statute, implies that the commission of one or more of the statutorily enumerated crimes is one of the group’s ‘chief’ or ‘principal’ occupations. [Citation.]” (*Sengpadychith, supra*, 26 Cal.4th at p. 323.) “Sufficient proof of the gang’s primary activities might consist of evidence that the group’s members *consistently and repeatedly* have committed criminal activity listed in the gang statute.” (*Id.* at p. 324.) The gang’s primary activities also may be proved by expert testimony. (*Id.* at p. 324; see also *People v. Vy, supra*, 122 Cal.App.4th at p. 1223, fn. 9.)

There was sufficient evidence of South Los gang’s primary activities. Section 186.22, subdivision (f) requires proof only that “one of [the gang’s] primary activities [is] the commission of one or more of” the crimes enumerated in subdivision (e). The California Supreme Court stated that, “Evidence of past or present conduct by gang members involving the commission of one or more of the statutorily enumerated crimes is relevant in determining the group’s primary activities. Both past and present offenses have some tendency in reason to show the group’s primary activity (see Evid. Code, §

210) and therefore fall within the general rule of admissibility (*id.*, § 351).”
(*Sengpadychith, supra*, 26 Cal.4th at p. 323.)

Detective Arevalo testified that the South Los gang’s primary gang activities includes vandalism, possession and sale of narcotics, assault with deadly weapons, robbery, attempted murder and murder, which are among the criminal activities enumerated in section 186.22, subdivision (e). (§ 186.22, subs. (e)(1), (2), (3), (4), (20).) Detective Arevalo also testified that L.R., a South Los gang member, was convicted of attempted murder and J.R., a “documented” South Los gang member, was convicted of possession of an illegal firearm. They too are among the criminal activities enumerated in section 186.22, subdivision (e). (§ 186.22, subs. (e)(3), (31).)

Defendant contends that Detective Arevalo’s testimony regarding South Los gang’s primary activities lacked the necessary foundation. We disagree.

Evidence code section 801 provides in part, “If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is: [¶] (b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion.”

“Although the courts have rejected expert opinions “[w]here the basis of the opinion is unreliable hearsay,” . . . nevertheless, hearsay information of a type *reasonably relied upon* by professionals in the field in forming an opinion on the subject may be used to support an expert opinion, even though not admissible in court. . . .’ [Citation.] [¶] . . . [T]he ‘reasonableness of an expert’s reliance is a question of degree and may well vary with the circumstances.’ [Citation.]” (*People ex rel. Dept. of Transportation v. Clauser/Wells Partnership* (2002) 95 Cal.App.4th 1066, 1085.) A “gang expert [may] base[] his opinion [of the gang’s primary activities] on conversations he had with [defendant] and fellow gang members, and on ‘his personal investigations of hundreds of crimes committed by gang members,’ together with information from colleagues in his

own police department and other law enforcement agencies.” (*Sengpadychith, supra*, 26 Cal.4th at p. 324, citing *People v. Gardeley* (1996) 14 Cal.4th 605, 620.)

“In *Gardeley*, a San Jose Police Department detective testified that the defendant’s gang engaged in the sales of narcotics and witness intimidation. The detective had personally investigated ‘hundreds of crimes committed by gang members. The detective gathered information from conversations with gang members as well as San Jose Police Department employees and other law enforcement agencies. (*People v. Gardeley, supra*, 14 Cal.4th at p. 620.) Opinion testimony of the type presented in *Gardeley* may constitute evidence sufficient to support a section 186.22 finding. (*People v. Sengpadychith, supra*, 26 Cal.4th at p. 324; *People v. Duran* (2002) 97 Cal.App.4th 1448, 1465 [119 Cal.Rptr. 2d 272].)” (*People v. Augborne* (2002) 104 Cal.App.4th 362, 372.) “A gang expert’s overall opinion is typically based on information drawn from many sources and on years of experience, which in sum may be reliable. [Citation.]” (*People v. Gonzalez* (2006) 38 Cal.4th 932, 949, citing *People v. Gardeley, supra*, 14 Cal.4th at p. 620.)

Defendant relies on *In re Alexander L.* (2007) 149 Cal.App.4th 605 (*Alexander L.*). In that case, the appellate court reversed the juvenile court’s true finding on a gang enhancement on the ground that the gang expert’s testimony was insufficient to support the primary activities element. The gang expert never “directly testif[ied] that criminal activities constituted [the gang’s] primary activities.” (*Id.* at p. 612.) The expert testified, “I know [the gang] committed quite a few assaults with a deadly weapon, several assaults. I know they’ve been involved in murders. [¶] I know they’ve been involved with auto thefts, auto/vehicle burglaries, felony graffiti, narcotic violations.” (*Id.* at p. 611.) The expert did not explain how he knew about the offenses (*id.* at p. 612), and on cross-examination, he conceded that the vast majority of cases relating to the gang involved graffiti, but failed to specify whether the incidents involved misdemeanor or felony vandalism. (*Ibid.*) The expert in *Alexander L.* thus failed to establish the foundation for his testimony, failed to testify that the crimes he cited constituted the gang’s primary activities, equivocated on direct examination and contradicted himself on

cross-examination. (*Id.* at pp. 611-612; *see People v. Margarejo* (2008) 162 Cal.App.4th 102, 107 [distinguishing *Alexander L.*].)

Here, in contrast, Detective Arevalo testified to his training and experience as a gang expert. As discussed, he also testified regarding the South Los gang's primary activities. His years dealing with the gang, his investigations of the gang's crimes, his personal conversations with gang members (including with defendant and defendant's family), and his review of the gang investigation unit's documentation, sufficed to establish the foundation for his testimony. (See *People v. Martinez* (2008) 158 Cal.App.4th 1324, 1330; *People v. Ramirez* (2007) 153 Cal.App.4th 1422, 1427.) Accordingly, the decision in *Alexander L.*, *supra*, 149 Cal.App.4th 605, does not alter our conclusion.

Defendant also relies on *People v. Perez* (2004) 118 Cal.App.4th 151. In that case, the defendant was charged, inter alia, with the gang-related attempted murder of an Asian teenager. (*Id.* at p. 154.) The prosecutor presented no expert testimony to establish the gang's primary activities. (*Id.* at p. 160.) Instead, the prosecution relied on evidence of the gang's "history of racial hatred and violent acts toward Asians, including the beating of an Asian child some years earlier and the shootings of Asian men in February 2002, as well as the instant offenses" (*Ibid.*) The appellate court held this evidence was insufficient, stating, "Even if we assume that the . . . gang was responsible for the shootings of Asians on February 16 and 18, as well as the shooting of [the victim in the case before the court], such evidence of the retaliatory shootings of a few individuals over a period of less than a week, together with a beating six years earlier, was insufficient to establish that 'the group's members *consistently and repeatedly* have committed criminal activity listed in the gang statute.' [Citation.]" (*Ibid.*)

Unlike *People v. Perez*, *supra*, 118 Cal.App.4th 151, there was expert testimony in this case sufficient to establish South Los's primary activities. We conclude the evidence was sufficient to establish that South Los was a criminal street gang within the meaning of section 186.22, subdivisions (b)(1) and (f).

DISPOSITION

The juvenile court's adjudication order is affirmed.

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MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.