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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

FERNANDO TRUJILLO,

Defendant and Appellant.

B234294

(Los Angeles County
Super. Ct. No. NA071027)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Richard R. Romero, Judge. Affirmed.

Lynda A. Romero, 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, Xiomara Costello and
Stephanie C. Brennan, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant, Fernando Trujillo, appeals the denial of his motion for a new trial following his conviction for second degree murder, with criminal street gang and firearm use enhancements (Pen. Code, §§ 187, 186.22, subd. (b), 12022.53).¹

The judgment is affirmed.

PROCEDURAL BACKGROUND

In his first appeal, (*People v. Trujillo et al.* (Oct. 6, 2009, B207534) [nonpub. opn.]), one of the issues raised was a claim the trial court had erred by denying Trujillo's post-verdict request to substitute retained counsel for the purpose of bringing a new trial motion. Pursuant to *People v. Ortiz* (1990) 51 Cal.3d 975, we concluded the trial court had abused its discretion by denying this substitution request. As a result, we ordered the judgment conditionally reversed and remanded to the trial court so Trujillo could renew his request for substitute counsel.

On remand, the trial court gave Trujillo leave to obtain substitute counsel. That attorney filed a new trial motion claiming there was insufficient evidence to sustain the gang enhancement which had been imposed in conjunction with Trujillo's murder conviction. The trial court denied the new trial motion and this appeal followed.

FACTUAL BACKGROUND

Trujillo's conviction arose out of a July 21, 2006, shooting in Wilmington. Between 80 and 100 people were attending a party in the backyard of a house. Among the party guests were defendant Trujillo and codefendant Michael Robles, both members of the Eastside Wilma gang. About 10 or 20 other Eastside Wilma members were also at the party. Miguel Amezcua and two of his friends, Willie and Louis, were selling beer at the party. When an argument broke out, apparently about paying for the

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

beer, Miguel took the beer cooler into the house. At that point, Willie and Louis were “jumped” by eight or nine gang members. The DJ stopped the music and the party was ended.

Miguel’s brother, Luis Amezcua, went to the front yard, where he saw Miguel arguing with a gang member named Michael Gonzalez. Seven or eight gang members, including Trujillo, began punching and kicking Miguel. Luis then heard a shot from the area where Miguel was being beaten. The gang members suddenly stopped fighting and Miguel fell to the ground. Robles then stepped up and shot Miguel three times with a handgun. Miguel suffered a fatal gunshot wound to the head. He also sustained a gunshot wound to the back and blunt force trauma to the head.

Krystal Barriga saw Trujillo start the fight in the backyard. Barriga subsequently saw the same people who had been involved in the backyard fight beating up someone in the front yard. Barriga saw Robles produce a handgun and shoot the person who was being beaten.

Deborah Navarro and Maricela Madrigal were inside the house when the party ended. Looking out the window they saw someone in the front yard being beaten by seven or eight people. Navarro then saw someone produce a handgun and fire two or three shots at the beating victim who was lying on the ground. Madrigal also witnessed the shooting.

Los Angeles Police Detective Walter McMahon testified Luis Amezcua told him he saw his brother Miguel arguing with Gonzalez in the front yard. Miguel was then attacked by four to six other gang members; they knocked him to the ground, and punched and kicked him. Luis heard a gunshot, saw his brother lying on the ground, and then heard two more gunshots.

An expert on criminal street gangs opined the shooting of Miguel Amezcua had been committed for the benefit of the Eastside Wilma gang.

Trujillo was convicted of second degree murder for the killing of Miguel Amezcua.² In addition, the jury found the murder had been committed for the benefit of a criminal street gang.

CONTENTION

Trujillo contends the trial court erroneously denied his new trial motion because there was insufficient evidence to sustain the gang enhancement.

1. *Legal principles.*

“When a verdict has been rendered or a finding made against the defendant, he may move for a new trial on various statutory grounds including that the verdict is contrary to the law or evidence. (§ 1181.) A trial court may grant a motion for new trial only if the defendant demonstrates reversible error. [Citation.] With regard to claims of sufficiency of the evidence, we have stated: ‘In reviewing a motion for a new trial, the trial court must weigh the evidence independently. [Citation.] It is, however, guided by a presumption in favor of the correctness of the verdict and proceedings supporting it. [Citation.] The trial court “should [not] disregard the verdict . . . but instead . . . should consider the proper weight to be accorded to the evidence and then decide whether or not, in its opinion, there is sufficient credible evidence to support the verdict.” [Citation.]’ [Citation.] On appeal, a trial court’s ruling on a motion for new trial is reviewed for abuse of discretion. [Citation.] Its ruling will not be disturbed on appeal ‘ “unless a manifest and unmistakable abuse of discretion clearly appears.” [Citation.]’ [Citation.]” (*People v. Guerra* (2006) 37 Cal.4th 1067, 1159-1160.)

“Section 186.22, subdivision (b)(1) imposes additional punishment when a defendant commits a felony for the benefit of, at the direction of, or in association with a criminal street gang. To 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

² Robles, who was convicted of first degree murder, is not a party to this appeal.

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. [Citations.]” (*People v. Duran* (2002) 97 Cal.App.4th 1448, 1457.) The gang statute then requires two further elements: evidence of “a felony committed for the benefit of, at the direction of, or in association with any criminal street gang,” *and* evidence the felony was committed “with the specific intent to promote, further, or assist in any criminal conduct by gang members” (§ 186.22, subd. (b)(1).)

2. *Evidence of gang involvement presented at trial.*

Trujillo argues the evidence showed nothing more than a personal dispute over the sale of beer, a dispute spontaneously escalating into a larger fight which then “spiraled out of control.” Trujillo asserts there was no evidence he had been acting in concert with other gang members, or that the gang had orchestrated the fight, because there was “no evidence of gang signs being flashed or gang names being called out or even the gang name being mentioned. There was no evidence the victim was a gang member. In fact, there was evidence he was not. In addition, the altercation did not occur in rival or hostile gang territory. Nothing about the case showed gang activity other than the evidence appellant was a gang member.”

However, Trujillo's characterization of the incident as merely a private argument which blew up into an out-of-control drunken melee is belied by the record. Although the initial spark may have been a personal dispute over the beer, the evidence showed the Eastside Wilma gang members acted together as a group by collectively attacking the victims.

a. *Eyewitness testimony.*

Luis testified he saw Louis and Willie “getting jumped” by eight or nine Eastside Wilma gang members in the backyard. Louis and Willie were knocked to the ground and then punched and kicked by the gang members. Afterward, in front of the house, Luis saw his brother Miguel arguing with a group of six to eight gang members,

including Trujillo. This group started punching and kicking Miguel. Other than Miguel and the gang members, no one else was involved in the altercation.

Krystal Barriga described the fight in the backyard. About 10 people “started jumping” the victim. Barriga “saw the first guy punch [the victim], and then he fell to the floor. And then they all started kicking him and beating him up.” “I guess maybe he was trying [to defend himself]. I just remember them all beating him up.” Then, in front of the house, Barriga saw “a group of guys beating up somebody.” “I . . . saw them kicking and jumping somebody again.” “They were all beating him up They were just beating him up really, really bad, and then I saw somebody pull out a gun and shoot him.”

Marciela Madrigal testified she saw “five, six guys” in the front of the house “beating up on this one kid.” “[T]hey just started hitting him, and then he ended up on the floor [*sic*].” “[T]he kid was on the floor, and I see about five or six guys – he’s already down – kicking him, stuff like that.” “They were kicking him for a while while he was down.” The victim was lying face down on the ground, motionless; he was not fighting back and appeared to be unconscious.

b. *Testimony from the gang expert.*

The gang expert, Mark Maldonado of the Los Angeles Police Department, testified the Eastside Wilmas were a large gang, with about 550 members, consisting of five different cliques or subdivisions. The gang’s primary activities included homicide, attempted homicide, robbery, assault with deadly weapons, grand theft auto and drug trafficking. At the time of this shooting, a gang injunction was in effect with regard to the Eastside Wilmas and the injunction had been served on both Trujillo and Robles. The shooting occurred within territory claimed by the Eastside Wilmas.

Maldonado explained the proper gang protocol should an Eastside Wilma member become involved in a physical altercation:

“A. You fight one, you fight them all. If they’re there, they are not gonna stand by. They are a gang. That’s kind of what they do. You know, one of them gets

in an altercation, they have their backup, they have their homeboys. They're going to jump into the fight, also.

“Q. Have you been involved in the investigation of fights where Eastside Wilma gang members have been involved?”

“A. Yes.

“Q. Have you been involved in investigations where there have been stabbings or shootings where Eastside Wilma gang members have been involved?”

“A. Yes.

“Q. Now, is it common or uncommon for fights with Eastside Wilma gang members to escalate into shootings or stabbings?”

“A. It's common.

“Q. Tell us about that.

“A. No gang member wants to come out second in any kind of confrontation. Hence, that's why a lot of them carry firearms on them, because that's the ultimate equalizer in any kind of confrontation they have.”

Asked a hypothetical question based on the evidence presented, Maldonado opined the shooting of Miguel Amezcua had “definitely [been] for the [gang's] benefit because anybody else who was at that party is gonna learn the very hard lesson that you don't stand up to Eastside Wilma gang members. If you do, this is what's gonna happen to you. It just continues the ongoing intimidation in the community, keeps that stranglehold that the gang has on the citizens. [¶] [I]n this hypothetical, there's six to eight. So, again, you don't fight one, you fight all of them, whoever is there. So they are an association. [¶] It also benefits the individuals who . . . are involved. Respect is everything in the gang world, and the way you get it is being violent. The more violent you are, the more respect you get.” As a result, the next time people in the neighborhood “see gang members break into a car, they see gang members robbing someone on the street, they're not gonna call [the police] . . . [T]hey don't want to get involved. They saw what happened to the last guy. They had a front row view of what happened when someone challenges [the] Eastside Wilmas criminal street gang.”

3. Discussion.

The evidence here was plainly sufficient to sustain the gang enhancement. The expert explained the Eastside Wilmas would attack non-gang members at a neighborhood gathering within their own territory in order to intimidate the community. And the eyewitness evidence demonstrated this message of intimidation had been effectively communicated without any need to flash gang signs or shout out gang names. Antonio Quijada, the DJ who provided the music for the party that night, testified he had lived in Wilmington for 12 years. He was not a gang member, but he was familiar with both the Eastside Wilmas and the Westside Wilmas, and he testified it was not hard to tell if someone belonged to one of these gangs. That night, Quijada noticed a group of six or seven gang members in the backyard. Luis Amezcua testified he grew up in Wilmington and was familiar with the area's gangs, including the Eastside Wilmas and the Westside Wilmas. He knew people who were gang members and he could tell whether or not a group of people were gang members by the way they spoke, carried themselves and dressed. At this party, Luis saw a group of 10 to 20 Eastside Wilmas members. Although Luis had never seen Trujillo before, he could tell Trujillo was a member of the Eastside Wilmas.

Contrary to Trujillo's assertions, the evidence did not show any kind of general melee or free-for-all; rather, the evidence showed a collective attack by gang members on individual victims. What took place were not fights, but a series of beatings that culminated in a fatal shooting.

Hence, there was sufficient evidence Trujillo was acting "in association with" the Eastside Wilmas because he acted in combination with Robles and other fellow gang members. (See *People v. Albillar* (2010) 51 Cal.4th 47, 62 ["defendants came together *as gang members* to attack [the victim] and, thus . . . they committed these crimes in association with the gang".]) There was also evidence the crime had been committed "for the benefit of" a gang. (See *People v. Galvez* (2011) 195 Cal.App.4th 1253, 1261 ["The crimes were committed for the benefit of the gang because, as . . . explained by [the gang expert], the gang members' act of severely beating [the victim]

in a public place in gang territory ‘promotes fear, which, in essence, promotes their gang and their brutality to the community in which they live.’ ”]; *People v. Vazquez* (2009) 178 Cal.App.4th 347, 354 [crime benefitted gang “because violent crimes like murder elevate the status of the gang within gang culture and intimidate neighborhood residents who are, as a result, ‘fearful to come forward, assist law enforcement, testify in court, or even report crimes that they’re victims of for fear that they may be the gang’s next victim or at least retaliated on by that gang’ This intimidation, obviously, makes it easier for the gang to continue committing the crimes for which it is known, from graffiti to murder.”].)

There was also evidence Trujillo had the “ ‘specific intent to promote, further, or assist in any criminal conduct by gang members’ ” (See, e.g., *People v. Morales* (2003) 112 Cal.App.4th 1176, 1198 [“specific intent to *benefit* the gang is not required”].) “[I]f substantial evidence establishes that the defendant intended to and did commit the charged felony with known members of a gang, the jury may fairly infer that the defendant had the specific intent to promote, further, or assist criminal conduct by those gang members. Here, there was ample evidence that defendants intended to attack [the victim], that they assisted each other in raping her, and that they were each members of the criminal street gang. Accordingly, there was substantial evidence that defendants acted with the specific intent to promote, further, or assist gang members in that criminal conduct.” (*People v. Albillar, supra*, 51 Cal. 4th at p. 68; see also *People v. Villalobos* (2006) 145 Cal.App.4th 310, 322 [“Commission of a crime in concert with known gang members is substantial evidence which supports the inference that the defendant acted with the specific intent to promote, further or assist gang members in the commission of the crime.”].)

In sum, we conclude the trial court did not abuse its discretion when it denied Trujillo’s new trial motion challenging the sufficiency of the evidence to support the gang enhancement.

DISPOSITION

The judgment is affirmed.

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KLEIN, P. J.

We concur:

KITCHING, J.

ALDRICH, J.