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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

SHAWN S. JACKSON,

Defendant and Appellant.

B234802

(Los Angeles County
Super. Ct. No. MA051433)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Charles A. Chung, Judge. Affirmed.

Linn Davis, 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, Michael C. Keller and Tannaz Kouhpainezhad, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Shawn S. Jackson was convicted, following a jury trial, of two counts of assault with a firearm in violation of Penal Code section 245, subdivision (a)(2),¹ one count of aggravated mayhem in violation of section 205 and one count of torture in violation of section 206. The jury found true the allegations that all four counts were committed for the benefit of a criminal street gang within the meaning of section 186.22, subdivision (b). The jury also found true the allegations that, in the commission of the assaults and torture, appellant personally used a firearm within the meaning of section 12022.5, subdivision (a) and inflicted great bodily injury within the meaning of section 12022.7, subdivision (a). The jury also found true the allegation that, in the commission of aggravated mayhem, appellant personally and intentionally discharged a firearm within the meaning of section 12022.53, subdivision (c) and personally and intentionally discharged a firearm causing great bodily injury within the meaning of section 12022.53, subdivision (d). The trial court found true the allegations that appellant had suffered three prior serious or violent felony convictions within the meaning of the "Three Strikes" law and had served two prior prison terms within the meaning of section 667.5, subdivision (b). The trial court sentenced appellant to a total of 120 years to life in state prison.

Appellant appeals from the judgment of conviction, contending that there is insufficient evidence to support the true findings on the gang enhancements.

Facts

On December 24, 2010, Jose Guzman ("Flaco") called Ruben Castro, and invited him to hang out at his house. Castro knew Flaco to be a member of the Junior Mafia gang. Castro was not a gang member, but hung out with the Junior Mafia gang. Castro would do drugs with the gang.

Castro thought there would be a party at Flaco's house, and was expecting a lot of people to be there. But when he arrived, there were only a few people at the house.

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

Castro felt that things were out of the ordinary because normally Flaco liked to hang out with a lot of people.

Castro went to Flaco's mom's bedroom and sat on the bed. Flaco's parents were out of town. Castro talked to a friend of Flaco's. About 10 minutes later, Castro heard appellant come to the door. Castro knew appellant as "Fly." Appellant asked Castro, "What's up?" Appellant was with another man whom Castro did not recognize.

Castro heard a bang from a gun, and felt a lot of pain in his left leg. Castro did not realize that he had been shot five inches above his left knee. Castro was in shock and in a lot of pain. After shooting Castro, appellant hit Castro over the head several times with a rifle. The third time Castro got hit, he heard another bang and fell to the floor. Immediately after Castro fell to the ground, appellant took his wallet, which had approximately \$200 in it. As appellant left, Castro heard him ask Flaco whether Flaco wanted the dope or the money. Castro thought he had been shot in the head, thought it was over, and blacked out.

After regaining consciousness, Castro called Juan Saenz to pick him up. Castro told Saenz that it was an emergency because he had been shot. Saenz arrived and took Castro to his girlfriend's house. Castro went from there to the hospital via ambulance. At the hospital, Castro had surgery to repair his leg, which had been shot with a .22 hollow point bullet. As a result of the shooting, Castro had a metal rod placed from his hip to his knee. He also received six staples to the back of his head. Castro was in the hospital for two days and on bed rest for a month and a half, and was unable to walk for almost three months.

Castro had met appellant once before and owed him \$100 for marijuana, which he had received a week before. Appellant had called Castro three times that week demanding his money. Appellant's tone of voice, and the way he acted in demanding the money from Castro, gave Castro "bad vibes," and so he did not meet with appellant. Castro was very concerned for his safety.

Castro was interviewed by Detective O'Neal a few days after the shooting. There were some discrepancies between Castro's statement to the detective and Castro's trial

testimony. Among other things, Castro did not tell Detective O'Neal about the man on the bed or the man accompanying appellant. He attributed these discrepancies to being under heavy medication when interviewed. Castro also initially told Detective O'Neal that he had borrowed money from appellant because he did not want to get into trouble for purchasing marijuana.

On December 30, 2010, Detective O'Neal served a search warrant at appellant's house. He found surveillance equipment, which showed live video feed of the front of the house. Detective O'Neal also found items that led him to believe that appellant sold narcotics. Specifically, Detective O'Neal recovered unused hypodermic needles, two hypodermic needles containing a white or clear substance, an electronic gram scale, and a pay and owe sheet. There were 12 names on the pay and owe sheet, including Castro's, which indicated he owed \$100.

Detective O'Neal was familiar with the Temple Street 13 gang, and found items inside appellant's room which indicated he was a Temple Street 13 gang member. Specifically, Detective O'Neal found a black hat, with a white "T" on the front, and appellant's gang moniker "Fly," embroidered on the side. There was also a large cork board with letters "TST," "TST 13," "WSTST 13," and "D" in various places. Detective O'Neal also recovered a photo album containing several pictures of suspected gang members. The pictures included male Hispanics with their shirts off and tattoos, throwing gang hand signs, with the words "West Side Los" or "Boys in the Hood" written above the pictures.

Detective O'Neal then interviewed appellant at the Palmdale station jail. At first, appellant denied knowing Castro, but eventually admitted that he knew Castro and Flaco, and had been at the house on December 24, to sell marijuana to Flaco. Detective O'Neal observed that appellant had a tattoo on one of his calves, which said, "Park Dillon." Park Dillon was an apartment complex in Los Angeles where a clique of the Temple Street gang originated.

Los Angeles Police Officer Jason Abner testified at trial as a gang expert. He had been a police officer for about 16 years, and worked with the Rampart Division Gang

Enforcement Detail. Officer Abner had extensive gang training in both Illinois and in Los Angeles, had been assigned to narcotics and gang enforcement, and had worked undercover in narcotics and weapons with gang members. He had also reviewed reports involving gang activity, had conducted hundreds of gang investigations, and had been in contact with gang members on an almost daily basis. Officer Abner had also worked with the City Attorney in obtaining a permanent gang injunction against the Temple Street gang, and had worked with senior officers, detectives, and homicide detectives.

Officer Abner had been assigned to the Rampart gang enforcement detail for a total of approximately three and one-half years. At the time of trial, he had been assigned to the Temple Street gang for two and one-half years. As a Temple Street gang Enforcement Detail officer, Officer Abner went out on a daily basis enforcing the laws in the gang area, got to know gang members, investigated gang crimes, and testified as an expert. Specifically as to the Temple Street gang, Officer Abner had testified as an expert 10 to 12 times.

Officer Abner testified that Temple Street gang was one of the oldest gangs in Los Angeles. It began in 1923. Although Temple Street gang had a number of cliques, their primary area was Sunset to the north, 3rd Street to the south, Hoover as a divider to the west, and Westlake as a divider to the east. Park Dillon was a clique of the Temple Street gang, which was in the area of 2nd and Dillon, and the name came from an apartment complex within that area. Temple Street gang had cliques all over Southern California including the San Fernando Valley and Palmdale.

The prosecution asked Officer Abner if he was "familiar with the primary activities of Temple Street?" Officer Abner replied that he was and that the Temple Street gang was involved in a number of activities, including homicide, robbery, burglary, narcotic sales, and weapons possession. When asked why narcotic sales were important to the Temple Street gang, Officer Abner replied that it was a way of getting money for the gang to buy weapons, drugs, and anything else it needed.

Officer Abner testified that Cecilio Garcia had been convicted for violating Health and Safety Code sections 11352, subdivision (a), and 11351.5. Garcia was a Temple

Street gang member with the moniker "Little Dopey." Garcia also had several tattoos, including the word "Temple" across his neck. Officer Abner also testified that Herson Gayton had been convicted of murder. Gayton was also a Temple Street gang member with the moniker "Little Shadow."

Officer Abner agreed with Detective O'Neal's conclusion that items found in appellant's room indicated allegiance to the Temple Street gang. He specifically pointed to the numerous words on the corkboard recovered from appellant's room as showing allegiance to the Temple Street gang. Officer Abner also testified that the hat found in appellant's room was something that Temple Street gang members often wore, and that it was also common for gang members to put their monikers and cliques on the hats.

Officer Abner was shown nine photographs of appellant's various tattoos, including the word "Temple" and a picture of a temple, a snake on his left elbow, "Park Dillon" on his lower left leg, and a "3" and a "T" on his right thigh. Officer Abner testified that the various tattoos all indicated Temple Street gang membership. Officer Abner testified that based on appellant's tattoos, his admission to other officers, the photograph where appellant represented "PDLs," and the baseball hat, he believed appellant to be a Temple Street gang member.

Given a hypothetical scenario resembling the facts of this case, Officer Abner opined that the crimes were committed for the benefit of the Temple Street gang.

Appellant did not offer any evidence in his defense.

Discussion

1. Sufficiency of the evidence - Primary activities

Appellant contends that there is insufficient evidence to show that the primary activities of the Temple Street gang was the commission of specified crimes, and thus insufficient evidence to support the jury's true finding on the section 186.22 gang enhancement allegation. Specifically, he contends that Officer Abner's testimony was flawed in a number of ways and does not constitute substantial evidence to support the true finding.

"In reviewing a challenge to the sufficiency of the evidence, we do not determine the facts ourselves. Rather, we "examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." [Citations.] We presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] The same standard of review applies to cases in which the prosecution relies primarily on circumstantial evidence and to special circumstance allegations. [Citation.] "[I]f the circumstances reasonably justify the jury's findings, the judgment may not be reversed simply because the circumstances might also reasonably be reconciled with a contrary finding." [Citation.] We do not reweigh evidence or reevaluate a witness's credibility. [Citations.]" (*People v. Nelson* (2011) 51 Cal.4th 198, 210.)

A criminal street gang is "any ongoing . . . group of three or more persons . . . having as one of its primary activities the commission of one or more" specified crimes and "having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity." (§ 186.22, subd. (f).)

"The phrase 'primary activities,' as used in the gang statute, implies that the commission of one or more of the statutorily enumerated crimes in one of the group's 'chief' or 'principal' occupations. (See Webster's Internat. Dict. (2d ed. 1942) p. 1963 [defining 'primary'].) That definition would necessarily exclude the occasional commission of those crimes by the group's members." (*People v. Sengpadychith* (2001) 26 Cal.4th 316, 323.)

The primary activity element of the gang statute may be satisfied by "the testimony of a police gang expert who expressed his opinion that the primary activities of the group in question were . . . statutorily listed crimes." (*People v. Sengpadychith*, *supra*, 26 Cal.4th at p. 322.)

Here, the prosecutor asked gang expert Officer Abner: "Are you familiar with the primary activities of Temple Street?" Officer Abner replied: "Yes. Temple Street is involved in a number of activities, one being homicide, robberies, burglaries, narcotics sales, weapons possessions." When asked how the sale of narcotics was important to the gang, Officer Abner explained that the sales were a way of getting revenue for the gang to buy things it needed, including weapons and other drugs.

Appellant contends that this response does not show that these activities were the "chief" or "principal" activity of the gang. We do not agree.

It is more than reasonable to understand Officer Abner's answer as stating that the primary activities of the gang are criminal acts. An answer need not repeat the words of the question to be responsive and comprehensible. "Ordinary human communication often is flowing and contextual. Jurors know this." (See *People v. Margarejo* (2008) 162 Cal.App.4th 102, 107 [rejecting claim that expert's testimony was insufficient because he did not repeat the word primary in response to question about a gang's primary activities].)

Appellant's reliance on *In re Alexander L.* (2007) 149 Cal.App.4th 605 to show insufficient evidence is misplaced. In that case, the expert "equivocated on direct examination and contradicted himself on cross-examination," testifying at one point that the vast majority of cases for the gang involved graffiti related offenses. (*People v. Margarejo, supra*, 162 Cal.App.4th at p. 107; see *In re Alexander L., supra*, 149 Cal.App.4th at pp. 611-612.) In this case, the expert did not equivocate or contradict himself.

Appellant further contends that Officer Abner's testimony was flawed because it did not contain any specifics about the circumstances of these crimes or how the officer obtained his information. He argues that Officer Abner's testimony could have been based on hearsay or speculation. We do not agree.

Officer Abner testified that he had been assigned to investigate the Temple Street gang for over two and a half years. As part of that assignment, he enforced the laws in gang areas on a daily basis, got to know the gang members, and investigated gang crimes.

Thus, Officer Abner had firsthand knowledge of the criminal activities of the Temple Street gang.

2. Sufficiency of the evidence – Benefit of the gang

Appellant contends that there is insufficient evidence to show that the crimes were committed for the benefit of, at the direction of or in association with, the gang, and so there is insufficient evidence to support the true finding on the gang enhancement allegation. Again, he contends that Officer Abner's testimony is flawed and does not constitute substantial evidence to support the true finding.

Section 186.22 requires that the defendant commit the charged crime for the benefit of, at the direction of or in association with, the gang and that he do so with the specific intent to promote, further or assist any criminal conduct by the gang. (*People v. Albillar* (2010) 51 Cal.4th 47, 51.) "Expert opinion that particular criminal conduct benefited a gang' is not only permissible but can be sufficient to support the . . . gang enhancement." (*People v. Vang* (2011) 52 Cal.4th 1038, 1048, quoting *People v. Albillar, supra*, 51 Cal.4th at p. 63.)

Officer Abner opined that "The whole basis of a gang is to be able to operate freely within that community and without fear of being readily reported by other people in the community or in the area is all based on fear. And when a gang member who is selling narcotics has a beef with someone who is not paying up, if there is not a repercussion for that, then that person and other people in the community will not be in fear of that person or that gang." This opinion testimony, together with the evidence that appellant was a drug dealer and a member of the Temple Street gang, and that one of the main activities of the gang was narcotic sales, is sufficient to support the enhancement. It is reasonable to infer that appellant was selling the drugs on behalf of or in concert with his gang and that he shot and beat Castro over an unpaid drug debt.

Even without expert opinion testimony, it would be reasonable to infer that appellant benefited from the criminal act both by collecting the drug debt and by intimidating his customer. Word of the beating could reasonably be expected to spread in

the community, and make other customers more forthcoming with their payments. Even if no one knew that appellant was a gang member, the gang would benefit from appellant's unhindered drug sales.

To the extent that appellant contends that Officer Abner's testimony is flawed because it is based on the unsupported conclusion that the Temple Street gang had expanded into the Antelope Valley, we do not agree. Officer Abner had been investigating the gang for over two years, and was qualified to give this testimony. Appellant lived in the Antelope Valley, had admitted to gang membership as recently as 2009 and was displaying gang-related items in his room. Appellant's presence in the Antelope Valley was thus itself a basis for Officer Abner to opine that the Temple Street gang had expanded its presence to that area. In addition, Officer Abner testified that some cliques of the Temple Street gang were organized by generation. Thus appellant could be acting on behalf of Temple Street no matter where he lived.

To the extent that appellant contends that the money obtained from selling marijuana to Castro did not benefit the gang, appellant misses the point. Appellant is correct that there is evidence that after he beat Castro and took his wallet, he offered drugs or money to Flaco. The amount offered is unknown, however, appellant could still have made a net profit. More importantly, the benefit would come from collection of other drug debts, and there is no reason to believe that Flaco would be paid for those debts. Indeed, the benefit would be that other debtors would pay up out of fear, without having to be lured somewhere they were vulnerable and then attacked.

Disposition

The judgment is affirmed.

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We concur:

TURNER, P. J.

ARMSTRONG, J.

KRIEGLER, J.