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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN LOERA,

Defendant and Appellant.

B263932

(Los Angeles County
Super. Ct. No. BA415136)

APPEAL from a judgment of the Superior Court of Los Angeles County, Henry J. Hall, Judge. Affirmed.

Lynda A. Romero, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews and David E. Madeo, Deputy Attorneys General, for Plaintiff and Respondent.

Juan Loera was convicted of first degree murder (Pen. Code,¹ § 187) and attempted murder (§§ 187, 664), both committed for the benefit of a criminal street gang. (§ 186.22, subd. (b)(1).) He challenges the sufficiency of the evidence to support the determination that he committed the crimes for the benefit of a gang. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

As the sole issue on appeal pertains to the sufficiency of the evidence to support the true finding on the gang enhancement, we need only recite in detail the evidence bearing on this finding. On July 13, 2013, Loera, an admitted member of the 38th Street gang, fired shots into a party at the Pueblo del Rio housing complex, killing one person and injuring another.

When questioned by police, Loera initially said that he had heard that members of the 38th Street gang shot members of a rival gang, the Pueblo Bishop Bloods or “Pueblos,” but that he had not been involved. Subsequently, however, Loera admitted that he was the shooter. He told the police that “Jokes” (a 38th Street gang member) drove him to the Pueblos,² where he approached the party, yelled “38,” and shot at the people there.

Loera’s mother met with him while he was in custody. When she asked what he had done, he answered, “Murder, Mommy.” He told her, “I killed somebody.” He informed her that the police knew everything that he did and that he was going to go to jail. Loera’s mother asked why he did it, and Loera responded, “Because I’m from 38, Mom.”

At trial, Los Angeles Police Department gang officer Bryan Schilling provided evidence pertaining to gangs in general and the 38th Street gang. Schilling had previously testified as a gang expert on the 38th Street gang and the Pueblos. Schilling testified that as of the time of the shooting, the 38th Street gang was a criminal street gang with approximately 250 members who used a common hand sign, wore a particular baseball cap, and

¹ Unless otherwise indicated, all further statutory references are to the Penal Code.

² The term “Pueblos” is used both to refer to the Pueblo Bishop Bloods and to the Pueblo del Rio housing complex where the party took place.

frequently bore tattoos featuring the numbers 3 and 8 and the letters T and E. Like many gangs, the 38th Street gang had cliques or subsets, one of which was the Morgan Boys or Morgan Block.

Schilling testified that the primary activities of the 38th Street gang included possession of firearms by convicted felons, grand theft auto, felony drug sales, burglary, home invasion robbery, attempted murder, assault with a deadly weapon, and murder. The prosecution presented evidence that Robert Benavidez and Noe Baeza were 38th Street gang members who were convicted of murder with a gang allegation that occurred in 2009. The prosecution also presented evidence that in 2009 38th Street gang member Raul Rodarte was convicted of murdering a member of the Pueblos, prompting a retaliatory shooting by the Pueblos against the 38th Street gang.

Schilling opined that Loera was a member of the 38th Street gang. Loera had told Schilling in August 2013 that he was a member of the 38th Street gang and that his moniker was “Shocks.” Schilling testified that Loera had tattoos of a T and an E on his wrists and a 3 and an 8 on one palm. At the time of trial, he had a tattoo of a 3 and an 8 on his head.

In response to a hypothetical question consistent with the evidence in the case, Schilling opined that such a shooting would be for the benefit of, at the direction of, and in association with a criminal street gang. For 38th Street gang members to enter Pueblos territory, leave their car, identify their gang, and commit a shooting would assert the 38th Street gang’s dominance and demonstrate its willingness to commit crimes against a rival gang. It would raise the status of both the gang itself and the shooter within the gang.

The jury convicted Loera of first degree murder and attempted murder, and found true the gang enhancement allegation as to both counts. The jury also found true firearm enhancement allegations pertaining to both counts under section 12022.53, subdivisions (b), (c), and (d). Loera admitted a prior strike conviction under the “Three Strikes” law. (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). Loera was sentenced for the murder to 25 years to life in prison, doubled because of the prior strike conviction, plus a consecutive sentence under section 12022.53, subdivision (d) of 25 years to life. For the attempted murder, Loera received a sentence of life imprisonment and a consecutive 25 years to life for the firearm enhancement

pursuant to section 12022.53, subdivision (d). Pursuant to section 186.22, subdivision (b)(5) and the Three Strikes law, for each count the court imposed a minimum confinement period of 30 years before Loera would become eligible for parole. Loera appeals.

DISCUSSION

Loera's sentence was enhanced because he committed his crimes "for the benefit of, at the direction of, or in association with any criminal street gang." (§ 186.22, subd. (b)(1).) A criminal street gang is defined by section 186.22, subdivision (f), as any "ongoing organization, association, or group of three or more persons" that shares a common name or common identifying symbol; that has as one of its "primary activities" the commission of certain enumerated offenses; and "whose members individually or collectively" have committed or attempted to commit certain predicate offenses. To prove that a criminal street gang exists in accordance with these statutory provisions, the prosecution must demonstrate both that the gang constitutes a criminal street gang and that the defendant sought to benefit that particular gang when committing the underlying felony. (*People v. Prunty* (2015) 62 Cal.4th 59, 67 (*Prunty*).)

Loera contends that there was insufficient evidence to support the true findings on the gang enhancement allegations pursuant to section 186.22, subdivision (b)(1). "When considering a challenge to the sufficiency of the evidence to support a conviction, 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 determine '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.' [Citation.] In so doing, a reviewing court 'presumes 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 the sufficiency of the evidence supporting special circumstance findings. [Citation].)" (*People v. Edwards* (2013) 57 Cal.4th 658, 715.)

Loera's argument on appeal is based on the recent decision in *Prunty, supra*, 62 Cal.4th 59, in which the California Supreme Court held that when the prosecution seeks to prove the street gang enhancement by showing a defendant committed a felony to benefit a given gang, but establishes the commission of the required predicate offenses with evidence of crimes committed by members of the gang's alleged subsets, it must also prove a connection between the gang and the subsets. (*Id.* at pp. 67-68.) In *Prunty*, the gang enhancement finding was not supported by substantial evidence because the prosecution had theorized that the offense was committed to benefit a larger, umbrella gang with subsets, but it had proven the predicate offenses with evidence of activities of two of the large gang's subsets without presenting evidence of an associational or organizational connection between the subsets or to the larger overarching gang. (*Id.* at pp. 81-82.)

Based on *Prunty*, Loera argues that because he was affiliated with the Morgan Boys or Morgan Block subset of the 38th Street gang, the prosecution was required to introduce evidence that the predicate offenses were committed by members of the Morgan Boys or Morgan Block subset of the 38th Street gang, or that the individuals who committed the predicate offenses had a connection or agreement with the Morgan subset. The *Prunty* situation, however, did not arise here, because the prosecution did not rely on the conduct of subsets to demonstrate the existence of a criminal street gang. (See *Prunty, supra*, 62 Cal.4th at p. 85.) The prosecution's theory was that Loera was a member of the 38th Street gang who committed the offenses to benefit that gang, and the predicate offenses presented to the jury were committed by 38th Street gang members. Accordingly, while there was evidence that Loera was affiliated with the Morgan Boys or Morgan Block subset of the 38th Street gang, the prosecution also presented evidence of Loera's membership in the 38th Street gang itself, including his admission that he was a member, his tattoos, his statement to his mother that he was "from 38," and his shout of "38" when he committed the shooting. The evidence also permitted a reasonable jury to conclude that the 38th Street gang was a criminal street gang within the meaning of section 186.22, subdivision (b)(1). Finally, the prosecution presented evidence from which the jury could conclude that Loera committed the murder and attempted

murder for the benefit of the 38th Street gang. The evidence was sufficient to support the jury's findings on the gang allegations.

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.