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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re ANTHONY J., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY J.,

Defendant and Appellant.

F062758

(Super. Ct. No. 07JQ0189B)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. George L. Orndoff, Judge.

Robert F. McLaughlin, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, and Louis M. Vasquez, Deputy Attorney General, for Plaintiff and Respondent.

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*Before Wiseman, Acting P.J., Levy, J., and Franson, J.

Following a contested jurisdiction hearing, the juvenile court found true substantive offense allegations that appellant, Anthony J., a minor, committed assault by means of force likely to produce great bodily injury (Pen. Code, § 245;¹ count 1) and street terrorism (§ 186.22, subd. (a); count 2), and an enhancement allegation that he committed the former offense for the benefit of, at the direction of, or in association with a criminal street gang, with the specific intent to promote, further, or assist in criminal conduct by gang members, within the meaning of section 186.22, subdivision (b)(1).² Thereafter, the juvenile court readjudged appellant a ward of the juvenile court,³ continued him on probation, and ordered that he serve 180 days in the Kings County Juvenile Academy Impact Program.

On appeal, appellant contends the evidence was insufficient to support the count 2 offense and the gang enhancement. We will affirm.

FACTS

The Assault

Edgar A. (Edgar) testified to the following: On the evening of February 17, 2011 (February 17), he was at his high school attending a class. During class, persons Edgar identified as “they” were “giving [him] dirty looks” because they believed, incorrectly, that Edgar was “in a [criminal street] gang.” After class, Edgar went to his locker, where

¹ All statutory references are to the Penal Code.

² We generally refer to subdivisions of section 186.22, and to smaller components of those subdivisions, in abbreviated form, e.g., sections 186.22(b), 186.22(a), and 186.22(b)(1). We refer to the section 186.22(b)(1) enhancement as the gang enhancement.

³ Appellant was initially adjudged a ward of the court, for committing first degree burglary (§§ 459, 460, subd. (a)), and, prior to the instant case, readjudged a ward in three subsequent wardship proceedings, for violating probation by engaging in both criminal and non-criminal conduct.

he was approached by Vincent D., another student who had been in class with Edgar. Vincent asked Edgar if he (Edgar) “bang[ed].” Edgar indicated he was “not a gangster” and did not “bang.” Vincent challenged Edgar to a fight, but Edgar ignored him and “turned around,” at which point Vincent began punching him in the back of the head. Edgar turned back toward Vincent and tried to “push him away,” and Vincent left the scene.

Approximately three to five minutes later, Edgar went to the parking lot to wait for his sister, I. A. (I.), and her husband, Eric R. (Eric), who were coming to pick him up. On direct examination, Edgar testified that while he was waiting outside, appellant, Vincent, Carlos S., and a fourth person he did not recognize approached him and “they just started punching” him. When asked specifically what appellant did, Edgar responded, “... all three of them were punching me at the same time.”

On cross-examination, Edgar testified to the following: “[A]t first,” Vincent and Carlos approached him and “began punching and kicking” him. Edgar did not know “how the other one got involved because [Edgar] was on the ground.” A total of three people were punching and kicking him, but Vincent and Carlos were “the main ones.”

On redirect examination, Edgar testified to the following: He did not remember how “the attack got started.” He remembered that he was “standing there” and the “next thing that I remember is seeing Carlos, Vincent and [appellant] punching me.” He “started feeling punches in the back again,” and, he testified, “I get to see it’s Carlos and Vincent and [appellant].” When asked where appellant was during the attack, Edgar testified, “He was kicking and punching me too.”

I. testified to the following: When she arrived on the scene, Edgar was on the ground and “three or four” males were kicking and punching him. She did not recognize appellant as one of them.

Martha Forlines testified to the following: She is the “school resource officer.” In helping investigate the attack on Edgar, she showed him a “series of [photographs] of the students that attended” school on the day of the attack, and from those photographs, Edgar identified appellant, Vincent and Carlos as persons who attacked him.

City of Hanford Police Officer Hector Cavazos testified to the following: He interviewed Edgar on February 17, at which time Edgar stated only two people attacked him, one of whom was Vincent. At some point, Officer Cavazos interviewed I., who told him that when she arrived on the scene two persons were beating Edgar, who was on the ground.

Kathy H. testified to the following: She was standing outside school in the parking lot area one evening in February 2011, talking to appellant and a female student, when Eric and another person approached Vincent and Carlos, who were standing approximately 15 feet away. Shortly thereafter, Vincent, Carlos, Eric, and the other person began fighting.

Paris S. testified to the following: She was in the parking lot area of her school on February 17, at approximately 7:00 p.m., when she saw Edgar and Eric walk up to a group of people. A fight ensued; the participants included Eric, Vincent and Carlos and, “after a while,” appellant.

Appellant testified to the following: On February 17, at approximately 7:00 p.m., he was standing in front of the school, near the parking lot, talking with Kathy and another female student, when Edgar and Eric approached Vincent and Carlos, who were “a good distance away” from where appellant was. Shortly thereafter, Carlos and Edgar began fighting. Appellant walked in the direction of the fight. As he approached, Eric “said something” to him, and struck him in the head. Appellant fought back.

Gang Evidence

John Henderson testified he is an “investigator with the Kings County Gang Task Force.” After the court found him “qualified to testify as an expert witness on criminal street gangs,” he opined that appellant is a member of the Norteno criminal street gang.⁴ He based this opinion on appellant’s “law enforcement regarding gang contacts,” including the following: he was “documented as a Norteno associate” when booked into juvenile hall in 2009, and in 2010, “he was asking a new student where he’s from and if he associated with any gangs,” and when told by another student, Juan, to “leave the kid alone,” he challenged Juan to a fight. It is “very typical” for a gang member to approach “a new student that comes into school” and ask if the student is a gang member. If the student says “he’s a northerner they’ll try to recruit him so they have ... an addition to their gang,” but “if he’s a rival gang member they will assault him,” an action that “gives them ... credibility within their gang.”

Vincent is a “known” and “self-admitted” member of the Norteno criminal street gang. The “primary activit[ies]” of the Norteno gang include “assaults, drive-by shootings, [and] robbery”

Officer Henderson opined that appellant’s “actions in this case ... would be a benefit to his gang” for the following reasons: those actions “[were] in association with” Vincent, a member of the gang; appellant’s actions would be made known to other gang members; and by “jump[ing] in a fight with [a fellow gang member] he “creates fear into” [*sic*] members of rival gangs “as well as citizens.”

The rival gang of the Nortenos is the Sureno gang. A member of the Nortenos would have the “desire” to commit assaults regardless of whether the victim was a

⁴ Except as otherwise indicated, the “Gang Evidence” section of our factual summary is taken from Officer Henderson’s testimony.

member of the Sureno gang because “These young guys are trying to make their mark,” “commit[ting] crimes” is “one of the ways to get accepted” by other members of their gang, and such conduct “shows the gang that they are down to do whatever it takes to be involved” with their gang.

Appellant testified to the following: He does not “consider” himself a “gang member.” He knows that Vincent is a “self-admitted Norteno,” and that Carlos is also a Norteno. In February 2010, he approached a student at school and, out of “[c]uriosity,” asked him if he associated with gangs.

DISCUSSION

As indicated above, appellant challenges the sufficiency of the evidence supporting both the gang enhancement and the count 2 substantive offense.

Standard of Review

In general, in determining whether the evidence is sufficient to support an adjudication in a juvenile court proceeding, the reviewing court is bound by the same principles as to sufficiency and the substantiality of the evidence which govern the review of criminal convictions generally. (*In re Roderick P.* (1972) 7 Cal.3d 801, 809.) Those principles include the following: “[T]he reviewing court must 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. [Citation.] The appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) “[W]e do not reweigh the evidence; the credibility of witnesses and the weight to be accorded to the evidence are matters exclusively within the province of the trier of fact.” (*People v. Stewart* (2000) 77 Cal.App.4th 785, 790.) “““To warrant the rejection of the statements given by a witness who has been believed by the [trier of

fact], there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions.””” (*People v. Barnes* (1986) 42 Cal.3d 284, 306.) These same principles apply to the review of a true finding of an enhancement allegation. (*People v. Albillar* (2010) 51 Cal.4th 47, 59-60 (*Albillar*.)

The Gang Enhancement (§ 186.22(b)(1))

The gang enhancement is defined in section 186.22(b), which provides for increased punishments for “any person who is convicted of a felony 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(b)(1).)

Establishing the gang enhancement requires a two-part showing. (*People v. Villalobos* (2006) 145 Cal.App.4th 310, 322.) The prosecution must establish the underlying crime was “[1] committed for the benefit of, at the direction of, or in association with any criminal street gang, [2] with the specific intent to promote, further, or assist in any criminal conduct by gang members....” (§ 186.22(b)(1).) Appellant contends the evidence was insufficient to establish either part of the required showing. We disagree.

We recognize, as appellant indicates, that “the Legislature included the requirement that the crime to be enhanced be committed for the benefit of, at the direction of, or in association with a criminal street gang to make it ‘clear that a criminal offense is subject to increased punishment under the STEP Act^[5] only if the crime is “gang related””” (*Albillar, supra*, 51 Cal.4th at p. 60), and that ““it is conceivable that several gang members could commit a crime together, yet be on a frolic and detour

⁵ “Section 186.22 was enacted in 1988 as part of the California Street Terrorism Enforcement and Prevention Act (STEP Act), section 186.20 et seq.” (*People v. Lopez* (2005) 34 Cal.4th 1002, 1005.)

unrelated to the gang.” (Id. at p. 62.) Under the principles of appellate review set forth above, however, the evidence here does not compel the conclusion that this is such a case.

In *Albillar, supra*, 51 Cal.4th 47, three defendants, all members of the same gang, forcibly raped their victim in turn. During the first rape, two of the men held the victim down. The defendants were convicted of various sex crimes, and the jury found gang enhancement allegations true as to each defendant and each crime. Our Supreme Court, in upholding the gang enhancements, found “substantial evidence that defendants came together *as gang members* to attack [the victim] and, thus, that they committed these crimes in association with the gang.” (Id. at p. 62.) The court based this conclusion, in part, on expert testimony of the following: “[O]ne of the most important things why gang members commit crimes together is the value of one gang member witnessing another gang member committing the crime because that gang member can share it with others or keep it within the group and bolster this person’s status by their level of participation in the crime.... [¶] Gang members do not increase their status or reputation by going out, necessarily going out and committing crime by themselves and then coming back and bragging about it to the rest of the gang with absolutely no proof of its occurrence.’ By committing crimes together, though, gang members increase their status not only among those participating in the crimes, but also among the entire gang when fellow participants ‘relay it’ to other gang members.” (Id. at p. 61.)

Similarly, Officer Henderson testified that both appellant and his gang would “benefit” from the assault in the instant case because other members of the gang who participated in the assault—in this case, Vincent—could report to other gang members that appellant “is down,” i.e., supports the gang with his violent actions, and that members of the Norteno gang commit assaults to enhance their reputation within, and gain acceptance from, their gang. Like the similar evidence in *Albillar*, this evidence

helps support the conclusion that the instant offense was gang related. From this evidence, considered in conjunction with Edgar's testimony that appellant participated in the assault along with Vincent, Officer Henderson's testimony that both appellant and Vincent are members of the Norteno gang, and appellant's admission that he knew both Vincent and Carlos were members of the Norteno gang, the juvenile court reasonably could have concluded that appellant joined in the attack on Edgar, *as a gang member*, and thus acted "in association with" his gang. (§ 186.22(b)(1).)

We also find instructive *People v. Morales* (2003) 112 Cal.App.4th 1176 (*Morales*). In that case, defendant and two other men committed a robbery together. All three were members of the same gang. In upholding a true finding of a gang enhancement allegation as to the defendants, the court acknowledged that arguably, evidence that one gang member committed a crime in association with other gang members, without more, would be insufficient to show that the crime was committed for the *benefit* of the gang. But, the court stated: "The crucial element, however, requires that the crime be committed (1) for the benefit of, (2) at the direction of, *or* (3) in *association* with a gang. Thus, the typical close case is one in which one gang member, acting alone, commits a crime. Admittedly, it is conceivable that several gang members could commit a crime together, yet be on a frolic and detour unrelated to the gang. Here, however, there was no evidence of this. Thus, the jury could reasonably infer the requisite association from the very fact that defendant committed the charged crimes in association with fellow gang members." (*Id.* at p. 1198.) Similarly, in the instant case, although there was evidence appellant, Carlos and Vincent were gang members and that they committed an assault together, there was no evidence that in doing so they were engaged in activity unrelated to the gang. Therefore, as in *Morales*, the trier of fact

reasonably could have inferred that appellant acted in “association with” his gang. (§ 186.22(b)(1).)⁶

We turn now to the specific intent element of the gang enhancement. In *Albillar*, our Supreme Court, in rejecting the defendants’ argument “that section 186.22(b)(1) requires the specific intent to promote, further, or assist a *gang-related* crime,” held: “The enhancement already requires proof that the defendant commit a gang-related crime in the first prong—i.e., that the defendant be convicted of a felony committed for the benefit of, at the direction of, or in association with a criminal street gang. [Citation.] There is no further requirement that the defendant act with the specific intent to promote, further, or assist a *gang*; the statute requires only the specific intent to promote, further, or assist criminal conduct by *gang members*.” (*Albillar, supra*, 51 Cal.4th at p. 67.) Moreover, that criminal conduct may be “the criminal conduct underlying the offense of conviction sought to be enhanced.” (*Id.* at p. 66.)

Here, the evidence was sufficient to establish the following: Vincent and Carlos were gang members; appellant knew he was a gang member; Vincent committed a criminal act, viz., an assault; and appellant assisted him in committing that assault. On this record, the juvenile court reasonably could conclude that appellant acted with the specific intent to assist, further, or promote the criminal conduct of at least one gang member. (*People v. Villalobos, supra*, 145 Cal.App.4th at p. 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”]; *People v. Lindberg* (2008) 45 Cal.4th 1, 27 [trier of fact may infer an accused’s specific intent from all the facts and

⁶ We express no opinion as to whether the evidence was also sufficient to establish that appellant acted “for the benefit of” or “at the direction of” a criminal street gang, within the meaning of section 186.22(b)(1).

circumstances shown by the evidence].) Thus, substantial evidence also supported the second prong of the showing required to establish the gang enhancement.

Appellant likens the instant case to *In re Daniel C.* (2011) 195 Cal.App.4th 1350 (*Daniel C.*), which upheld a challenge to a true finding of a gang enhancement allegation. In that case, the minor, Daniel, and two other young men entered a grocery store. A few minutes later, after Daniel's companions left the store, Daniel picked up a bottle of liquor, and walked to the front of the store and through a check stand carrying the bottle. When the store manager approached Daniel and said, "Give me the bottle," the minor struck him with the bottle. (*Id.* at p. 1353.) Daniel ran out the entrance door and to a truck, which then drove off. (*Id.* at p. 1354.) A witness gave police a description of the truck, and police later stopped a truck meeting the description and detained its four occupants: appellant and three other young men. (*Ibid.*) During an interview with police, the minor indicated his companions did not know he intended on going into the store to take alcohol without paying for it. (*Ibid.*) An expert witness opined that appellant and one of the truck's occupants were "active participant[s]" in the Norteno gang, and that one of other persons in the truck was a "Norteno affiliate." (*Id.* at p. 1355.)

Daniel C. is inapposite. First, as the court noted, "[Daniel's] companions left the store before he picked up the liquor bottle, and they did not assist him in assaulting [the store manager]. Indeed, there is no evidence in the record that [Daniel's] companions even saw what happened in the store after they left." (*Daniel C., supra*, 195 Cal.App.4th at p. 1361.) Thus, in contrast with the instant case, there was no evidence Daniel committed his crimes in concert with anyone else. Moreover, in *Daniel C.*, but again unlike the instant case, there was evidence—Daniel's statements to police that his companions did not know he intended to commit a theft—that the accused, in committing the assault on the store manager, was on a frolic and detour, unrelated to his gang. (See

Morales, supra, 112 Cal.App.4th at p. 1198 [“association” under section 186.22(b)(1) established where there was “no evidence” defendant was “on a frolic and detour unrelated to the gang”].) Thus, *Daniel C.* is distinguishable from the instant case because in *Daniel C.*, the evidence was insufficient to establish Daniel committed his crimes “in association with” his gang. (§ 186.22, subd. (b)(1).)

In addition, in *Daniel C.*, the court found “there was no evidence in the record that [the three young men detained along with Daniel] committed or were charged with *any* crime in connection with [Daniel’s] theft of the liquor bottle from the supermarket. Thus, it cannot be inferred from the facts and circumstances of [Daniel’s] crime, standing alone, that his purpose in committing it was to promote, further, or assist criminal conduct by gang members.” (*Daniel C., supra*, 195 Cal.App.4th at p. 1362.) In the instant case, by contrast and as indicated above, appellant’s gang member co-participants committed a crime, viz., an assault, and therefore, unlike in *Daniel C.*, the evidence was sufficient to establish that appellant acted with the specific intent to “assist in any criminal conduct” (§ 186.22(b)(1)) by a gang member.

Street Terrorism (§ 186.22(a))

“The substantive offense [commonly known as street terrorism] defined in section 186.22(a) has three elements. Active participation in a criminal street gang, in the sense of participation that is more than nominal or passive, is the first element of the substantive offense defined in section 186.22(a). The second element is ‘knowledge that [the gang’s] members engage in or have engaged in a pattern of criminal gang activity,’ and the third element is that the person ‘willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang.’ (§ 186.22(a).)”⁷ (*People v. Lamas*

⁷ Section 186.22(a) states: “Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious

(2007) 42 Cal.4th 516, 523.) Appellant contends the evidence was insufficient to establish the first of these elements, and therefore his adjudication of violating section 186.22(a) cannot stand. We disagree.

First, as demonstrated above, the evidence was sufficient to establish that appellant was a member of a criminal street gang and that he committed the instant aggravated assault in concert with members of his gang, and that therefore appellant, in committing that offense, acted *as a gang member*. Moreover, the People introduced evidence that in 2010 appellant asked a new student in his school if the student associated with gangs, and such conduct is “very typical” of gang members, and that it is done so that the new student can either be recruited for the gang, if he is not a gang member, or attacked, if he is a member of some other gang. The foregoing is sufficient to establish that appellant participated in a criminal street gang in a manner that was far more than nominal or passive. Therefore, appellant’s challenge to his adjudication of violating section 186.22(a) is without merit.

DISPOSITION

The judgment is affirmed.

criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.”