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

In re ERIK G., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIK G.,

Defendant and Appellant.

F063323

(Super. Ct. No. JJD063296)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Juliet L. Boccone, Judge.

Ann Bergen, 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, Louis M. Vasquez, Leanne Le Mon, and Lewis A. Martinez, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Gomes, J., and Kane, J.

It was alleged in a juvenile wardship petition that appellant, Erik G., a minor, committed a violation of former Penal Code section 166, subdivision (a)(9) (contempt of court by willful violation of a gang injunction).¹ At the jurisdiction hearing, after the People had rested, appellant moved to dismiss the petition, pursuant to Welfare and Institutions Code, section 701.1 (section 701.1). The juvenile court denied the motion and found the allegation true. At the subsequent disposition hearing, the court declared appellant a ward of the court, continued him on probation,² and ordered that he serve 90 to 180 days in the Youth Treatment Center Unit.

On appeal, appellant contends his adjudication cannot stand because (1) the gang injunction he was found to have violated was unconstitutionally vague, (2) the court erred in denying appellant's motion to dismiss. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Injunction

The Tulare County Superior Court issued a gang injunction prohibiting “the Nortenos”—a criminal street gang—“and its gang members” from engaging in certain activities in a designated geographic area termed the “Safety Zone.” Prohibited activities included “standing, sitting, walking, driving, gathering, or appearing anywhere

¹ Under former Penal Code section 166, subdivision (a)(9)—now designated Penal Code section 166, subdivision (a)(10)—misdemeanor contempt of court includes “Willful disobedience of the terms of any injunction that restrains the activities of a criminal street gang or any of its members, lawfully issued by any court, including an order pending trial.” We refer to an injunction of the sort referenced in this statute as a gang injunction.

² Appellant was initially placed on probation in March 2010, following his adjudication of two counts of first degree burglary (Pen. Code, §§ 459, 460, subd. (a)), one count of grand theft (Pen. Code, § 487, subd. (a)), and two counts of petty theft (Pen. Code, § 484, subd. (a)).

in public view or any place accessible to the public, with any known member of the SURENOS and NORTENOS criminal street gangs”³

The Instant Offense

The court found that Tulare County Sherriff’s Department Detective Hector Rodriguez was qualified to testify as an expert on criminal street gangs. Rodriguez opined that appellant is a member of the Nortenos gang, based on appellant’s “[s]elf-admission, association with other members, gang clothing or attire, and admission in a custodial facility.”⁴ The detective served a copy of the injunction on appellant in December 2010.

On February 17, 2011 (February 17), Rodriguez was on patrol when he saw appellant and Raul R. (Raul) in the Safety Zone, “almost shoulder to shoulder, walking right next to each other.” Rodriguez served Raul with a copy of the injunction.

Rodriguez opined that on February 17 Raul was, and had been for at least three years, a “member of the Norteno gang.” There were three prior law enforcement contacts with Raul. First, in May 2008, he admitted he was at that time, and had been for one year, a member of the Nortenos; he was wearing “gang clothing,” i.e., “red clothing”; and he had in his possession “a zigzag carton” on which was written “BPC,” which stands for “Brown Pride Catella,” a group that is part of the Nortenos. Second, in October 2008, Raul had in his possession a “club” on which was “engraved or tagged” “Norteno writing.” Finally, in September 2010, Raul was contacted by law enforcement while walking with a Norteno gang member.

There are two types of criminal street gang members: “validated” gang members, i.e., those who have been “jumped in,” and “associates,” persons who “are part of the

³ We refer to this gang injunction as the injunction.

⁴ All information in this section is taken from Detective Rodriguez’s testimony.

gang, but they haven't been jumped in." Associates "do everything that the gang does" Rodriguez did not "distinguish" between validated members and associates because "they are both equally ... capable of committing a crime. They match everything, all the criteria that we ... hold to validate a gang member." A person's "status" in a gang can "change over time."

On February 17, after Rodriguez "advised [appellant] of his *Miranda* rights"⁵ and asked appellant "why he was out in public with another Norteno gang member," appellant told him the following: Appellant was "unaware that he couldn't be out with [Raul]." He was "under the impression that he couldn't be with ... people who had already been served with an injunction." He had been "hanging out" with Raul for approximately two years. Appellant "knew [Raul] associates with the Nortenos, not that ... [Raul] was an actual gang member[.]"

There are approximately 3,000 members of the Norteno gang in Tulare County.

The Court's Ruling at the Jurisdiction Hearing

In rejecting defense counsel's argument that the People had not established that appellant knew Raul was a gang member, the court stated: "[You are] operating with a slightly false premise in that I do [not] find [appellant's] assertion that he didn't know [Raul] was a gang member to be credible. [Raul] was a friend of [appellant's] for two years. You are not a friend of somebody who's involved in gangs and not know what their status is. That just does not make any sense whatsoever. That's where the premise fails. Just because [appellant] made that representation, I have not received any evidence which refutes my belief that that was not a credible statement."

⁵ See *Miranda v. Arizona* (1966) 384 U.S. 436.

DISCUSSION

Vagueness

In determining whether a statute or an injunction is unconstitutionally vague, “the underlying concern is the core due process requirement of adequate *notice*. ‘No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.’ [Citations].” (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1115 (*Acuna*)). Two principles guide the evaluation of whether a law or other judicial directive is unconstitutionally vague. First, “abstract legal commands must be applied in a specific *context*. A contextual application of otherwise unqualified legal language may supply the clue to a law’s meaning, giving facially standardless language a constitutionally sufficient concreteness. Indeed, in evaluating challenges based on claims of vagueness, the court has said ‘[t]he particular context is all important.’ [Citation].” (*Id.* at p. 1116.) Thus, in *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1107, it was held that the terms of a statute claimed to be unconstitutionally vague “‘are not so *when the purpose clause of the ordinance is considered and the terms are read in that context as they should be.*’ (Italics added.)” (*Acuna*, at p. 1117.) Second, only “‘*reasonable specificity*’” is required. (*Ibid.*) Thus, a “statute will not be held void for vagueness ‘if any reasonable and practical construction can be given its language or if its terms may be made reasonably certain by reference to other definable sources.’” (*Ibid.*)

Appellant argues that the injunction fails to pass constitutional muster on vagueness grounds for two reasons. First, he asserts the injunction is unconstitutionally vague because it “fails to define the term ‘member of the Surenos or Nortenos’—specifically, whether defendant’s companion (the ‘known gang member’) must be an actual member, an associate or whether it is sufficient to be a putative member.”

Appellant bases this claim chiefly on *Lanzetta v. New Jersey* (1939) 306 U.S. 451 (*Lanzetta*). In that case, the United States Supreme Court invalidated an anti-gang statute. The New Jersey statute in question provided for criminal penalties for any person who was, inter alia, “known to be a member of any gang” (*Id.* at p. 452.) In the portion of the opinion upon which appellant relies, the high court stated: “The enactment employs the expression, ‘known to be a member.’ It is ambiguous. *There immediately arises the doubt whether actual or putative association is meant.* If actual membership is required, that status must be established as a fact, and the word ‘known’ would be without significance. If reputed membership is enough, there is uncertainty whether that reputation must be general or extend only to some persons. And the statute fails to indicate what constitutes membership or how one may join a ‘gang.’” (*Id.* at p. 458, italics added.)

We first address the claim that the injunction is unconstitutionally vague because it does not specify whether a “known gang member” must be, in appellant’s formulation, an “actual member” or an “associate.” *Lanzetta* did not discuss these categories. Therefore, *Lanzetta* does not support appellant’s position on this point. (*People v. Martinez* (2000) 22 Cal.4th 106, 118 [“[c]ases are not authority for propositions they do not consider”].)

Under the principles summarized above, we interpret the language in question in light of the purposes of the injunction, and with reference to another source, viz., Detective Rodriguez’s testimony. In an introductory section, the injunction states that the “acts, conduct, and activities” of the Nortenos gang “and its members” are “injurious to the health, indecent or offensive to the senses of persons within [the Safety Zone] and constitute an obstruction to the free use of property in the Safety Zone” The manifest purpose of the injunction is to curtail such “acts, conduct and activities,” and, according to Detective Rodriguez’s testimony, a gang associate is a type of gang member and there is no difference in the injurious conduct of the two categories of gang membership.

Therefore, the most reasonable interpretation of the injunction is that it is directed at restricting association with—to use appellant’s categories—both “actual members” and “associates.” As so interpreted, appellant’s vagueness challenge based on the purported actual member/associate dichotomy is without merit.

We turn now to appellant’s claim the injunction is vague because it cannot be determined whether “putative” membership will suffice. This claim requires a different analysis because *Lanzetta* addresses this point. On this point we find instructive *People v. Green* (1991) 227 Cal.App.3d 692 (*Green*). In that case, the court, in addressing a void-for-vagueness challenge to a statute, stated: “‘Member’ and ‘membership’ are terms of ordinary meaning, and require no further definition. [Citations.] Further, ‘member’ has been judicially defined as meaning that a person bears a relationship to an organization that is not accidental, artificial or unconsciously in appearance only. [Citation.]” (*Id.* at p. 699.) The court also stated, citing *Scales v. United States* (1961) 367 U.S. 203, 223: “[I]t has been held that a ‘member’ may not be subjected to criminal liability for the acts of the association to which he is a member unless his membership is ‘active,’ a term which has been held to be well understood in common parlance.” (*Green*, at pp. 699-700.)

In concluding that the term “membership” in a criminal statute did not render the statute void for vagueness, and further that such conclusion was not inconsistent with the holding in *Lanzetta*, the *Green* court, noting that “the court in *Lanzetta* recognized that judicial construction of a term could save a statute” (*Green, supra*, 227 Cal.App.3d at p. 701, fn. 2), stated, “the complaint of the court in *Lanzetta*, that the statute fails to indicate what constitutes membership, was resolved by the cases such as *Scales*, cited above, which were decided after *Lanzetta*, and which also involved statutes failing to specify those acts by which a person might be deemed a member” (*id.* at p. 701, fn. omitted, overruled on another point in *People v. Castenada* (2000) 23 Cal.4th 743).

Accordingly, we too conclude the use of the term “known gang *member*” (italics added) in the injunction does not run afoul of the holding in *Lanzetta* and does not render the injunction unconstitutionally vague.

In the second part of his void-for-vagueness attack on the injunction, appellant argues that the term “‘**known member**’ fails to define **who** must know that the companion is a member of the Surenos or Nortenos.” The injunction is unconstitutionally vague, he claims, because it fails to specify whether an accused must know his or her companion is a gang member, or whether gang membership must be known to law enforcement personnel. This argument too was not addressed in *Lanzetta*, and our Supreme Court rejected a virtually identical claim in *Acuna, supra*, 14 Cal.4th 1090. That case involved the defendants’ attack on a preliminary injunction obtained by the City of San Jose that enjoined them from associating with “‘any other known ... member’ [of two specified criminal street gangs].” (*Id.* at p. 1117.) The Court of Appeal concluded that the injunction under review “might apply to a circumstance in which a defendant was engaged in one of the prohibited activities with someone known to the police but *not known to him* to be a gang member,” and that “such indefiniteness presented ‘a classic case of vagueness.’” (*Ibid.*) Our Supreme Court disagreed. The court stated: “We agree that in such a hypothetical case, the City would have to establish a defendant’s own knowledge of his associate’s gang membership to meet its burden of proving conduct in violation of the injunction. Far from being a ‘classic’ instance of constitutional vagueness, however, we think the element of knowledge is fairly implied in the decree. To the extent that it might not be, we are confident that the trial court will, as the Court of Appeal did in *People v. Garcia* (1993) 19 Cal.App.4th 97, 103, impose such a limiting construction on paragraph (a) by inserting a knowledge requirement should an attempt be made to enforce that paragraph of the injunction. With that minor emendation, the text of provision (a) passes scrutiny under the vagueness doctrine.” (*Id.*

at pp. 1117-1118.) As the United States Supreme Court has observed: “[T]he Court has recognized that a scienter requirement may mitigate a law’s vagueness, especially with respect to the adequacy of notice to the complainant that his conduct is proscribed.” (*Hoffman Estates v. Flipside, Hoffman Estates* (1982) 455 U.S. 489, 499.) As in *Acuna*, we conclude the injunction provides adequate notice as to who must know that certain persons are gang members, and is therefore not unconstitutionally vague.

Motion to Dismiss

Appellant contends the evidence that had been introduced at the time he made his motion to dismiss was insufficient to establish he knew his companion was a gang member, and that therefore the court erred in denying the motion. We disagree.

Applicable Legal Principles

Section 701.1 authorizes the juvenile court, upon the minor’s motion, to dismiss a wardship petition “after the presentation of evidence on behalf of the petitioner has been closed, if the court, upon weighing the evidence then before it, finds that the minor is not a person described by section 601 or 602.” (§ 701.1.) Section 701.1 “is substantially similar to Penal Code Section 1118 governing motions to acquit in criminal trials [¶] Thus, the requirement in a criminal case that on a motion for acquittal the trial court is required ‘to weigh the evidence, evaluate the credibility of witnesses, and determine that the case against the defendant is “proved beyond a reasonable doubt before [the defendant] is required to put on a defense”’ applies equally well to motions to dismiss brought in juvenile proceedings. [Citation.]” (*In re Anthony J.* (2004) 117 Cal.App.4th 718, 727, fn. omitted.)

“[T]he standard for review of the juvenile court’s denial of a motion to dismiss is whether there is substantial evidence to support the offense charged in the petition. [Citation.] In applying the substantial evidence rule, we must ‘assume in favor of [the court’s] order the existence of every fact from which the [court] could have reasonably

deduced from the evidence whether the offense charged was committed and if it was perpetrated by the person or persons accused of the offense. [Citations.] Accordingly, we may not set aside the trial court’s denial of the motion on the ground of the insufficiency of the evidence unless it clearly appears that upon no hypothesis whatsoever is there sufficient substantial evidence to support the conclusion reached by the court below.’ [Citations.]” (*In re Man J.* (1983) 149 Cal.App.3d 475, 482.) “[T]he relevant question 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.’ [Citations.]” (*People v. Lewis* (2009) 46 Cal.4th 1255, 1289-1290.)

“Substantial evidence includes circumstantial evidence and any reasonable inferences drawn from that evidence.” (*In re Michael D.* (2002) 100 Cal.App.4th 115, 126.) “[W]hile substantial evidence may consist of inferences, such inferences must be “a product of logic and reason” and “must rest on the evidence” [citation]; inferences that are the result of mere speculation or conjecture cannot support a finding [citations.]” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394, italics omitted.) “Evidence which merely raises a strong suspicion of the defendant’s guilt is not sufficient to support a conviction.” (*People v. Redmond* (1969) 71 Cal.2d 745, 755.)

Analysis

As indicated earlier, the basis of appellant’s insufficiency-of-the-evidence argument is his claim that substantial evidence does not support the conclusion that he *knew* Raul was a gang member. Specifically, he asserts that (1) there is a difference between gang associates and gang members; (2) the injunction should be interpreted as restricting a gang member’s contact with gang members, as opposed to associates; (3) appellant testified that he thought Raul was an associate; and therefore there is “no

evidence” appellant was in the company of a “known member” of the Nortenos gang, within the meaning of the injunction.

The major premise of appellant’s conclusion is the second point above, i.e., the claim that the injunction must be interpreted to limit association with gang members, as opposed to gang associates. He bases this premise, in turn, on the principle, as stated in *Butler v. Superior Court* (1960) 178 Cal.App.2d 763, 765: “Any ambiguity in the decree must be resolved in favor of the accused.” Appellant’s major premise is false.

The principle appellant invokes is a version of a rule of statutory construction—the rule of lenity—applied in the context of the interpretation of an injunction upon which criminal liability is based. That rule generally requires that “ambiguity in a criminal statute should be resolved in favor of lenity, giving the defendant the benefit of every reasonable doubt on questions of interpretation.” (*People v. Soria* (2010) 48 Cal.4th 58, 65.) However, “that rule applies “only if two reasonable interpretations of the statute stand in relative equipoise.” [Citation.]’ [Citations.]” (*Ibid.*) That is not the case here. As demonstrated above, the more reasonable interpretation of the injunction is that the term “known gang member” includes both validated members and those who fall into the “associate” category of membership. Accordingly, it is of no moment that Raul may have been an associate as opposed to a validated member. Regardless of how Raul’s gang membership is categorized, Detective Rodriguez’s testimony was sufficient to establish Raul was a member of the Norteno gang within the meaning of the injunction.

The question that remains is whether the evidence was sufficient to establish that appellant knew Raul was a gang member, i.e., either a validated member or an associate. Appellant argues that the evidence that appellant had known Raul for two years is insufficient to establish this fact because of the large number of Nortenos in Tulare County, the absence of evidence that law enforcement had, prior to February 17, observed appellant and Raul together, and the evidence that a person’s gang status can

change over time. We disagree. In our view it is reasonably inferable from the evidence that Raul was a gang member, considered in conjunction with the evidence that appellant had been associating with Raul for approximately two years, and that appellant knew of Raul's gang membership. Indeed, as the court found, it is implausible that he did not know. Therefore, on this record, we conclude substantial evidence supports the instant adjudication.

DISPOSITION

The judgment is affirmed.