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

In re R.C., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

R.C.,

Defendant and Appellant.

F064198

(Super. Ct. No. JL003609)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Merced County. David W. Moranda, Judge.

Candice L. Christensen, 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, Julie A. Hokans and J. Robert Jibson, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Cornell, J., and Detjen, J.

Following a contested jurisdiction hearing, the juvenile court found true allegations that appellant, R.C., a minor, committed assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)),¹ and that in committing that offense he inflicted great bodily injury upon the victim (§ 12022.7, subd. (a)), acted 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 (§ 186.22, subd. (b)(1)(C)),² and violated his probation that had been granted in a prior wardship proceeding. Following the subsequent disposition hearing, the court ordered appellant committed to the Department of Corrections and Rehabilitation, Division of Juvenile Justice, and set his maximum period of physical confinement at 20 years 8 months, based on offenses and enhancements adjudicated in both the instant case and in a prior wardship proceeding.

On appeal, appellant contends (1) the evidence was insufficient to support the gang enhancement and (2) the court erred in including the great bodily injury enhancement in the maximum period of physical confinement time. We reject the first contention, find merit in the second, reverse the disposition order, remand for a rehearing on disposition, and otherwise affirm.

FACTS

Victim's Testimony

At approximately midnight on April 12, 2011, Brandon C. (Brandon) and his friend Rolando were walking in a park in Los Banos when they were approached by appellant and two of appellant's friends.³ Appellant asked Brandon if he (Brandon) was

¹ All statutory references are to the Penal Code.

² We refer to the enhancements set forth in sections 12022.7, subdivision (a) and 186.22, subdivision (b)(1)(C) as, respectively, the great bodily injury enhancement and the gang enhancement.

³ Information in this section is taken from Brandon's testimony.

a “Sureno.” Brandon responded, “no.” Appellant asked Brandon if he was “positive,” and Brandon responded he was “a hundred percent positive.” Appellant and his friends spoke among themselves, and then appellant told Brandon he liked Brandon’s sweater and told him to take it off. Brandon initially refused but appellant “took out the knife,” at which point Brandon handed appellant the sweater.

Appellant then told Brandon he liked Brandon’s shoes. Brandon said they did not belong to him. (In fact, they belonged to Rolando; Brandon had borrowed them.) At that point a police car drove by, and Brandon, Rolando, appellant and appellant’s companions ran to “some abandoned house.”

At the house, Brandon talked with Rolando and appellant talked with his friends. Appellant said nothing to Brandon. After approximately five to ten minutes, Brandon and Rolando ran off, in different directions.

Brandon ran to Rolando’s house, and began banging on the door. He was there approximately 30 seconds when appellant arrived on the run, holding a knife. Appellant stabbed Brandon in the left arm four times. Later, at a hospital, Brandon received 14 to 16 stitches for his wounds.

Although “[some members of Brandon’s] family are associated with Sureno gang members,” Brandon is not a “Sureno.” The “Nortenos” is the “rival gang” of the Surenos. The color red is associated with the Nortenos. At the time he was stabbed, Brandon was wearing a white shirt, black jeans and gray shoes with red laces.

Investigating Officer’s Testimony

City of Los Banos Police Detective Wesley Townsley testified he interviewed appellant on April 26, 2011, at which time appellant “admitted to slashing the knife at [Brandon] due to a previous confrontation between he and [Brandon] that occurred earlier at the fairgrounds. It was kind of a retaliation thing.” Appellant also stated that on the night of the attack, “when he and Brandon were in the back yard of the abandoned house

they started talking bad about each other's family[,]” and “that made [appellant] upset and that's when he started chasing [Brandon] with a knife”

Gang Evidence

The parties stipulated that “Nortenos and Surenos are validated gangs that are rivals”

City of Los Banos Police Detective Eduardo Sanchez-Solis was qualified as a “gang expert.” He testified to the following: In reviewing the Los Banos Police Department records, he found “several reports in which [appellant's] involvement and participation with the Norteno criminal street gang were documented.” Appellant “has previously admitted to being a Norteno associate” and in the instant case he admitted to being a “member” of the Nortenos.

Detective Sanchez-Solis opined: “[Appellant] committed the [instant offense] for the benefit of the Norteno criminal street gang. In doing so, by confronting a victim [whom] he suspects is a rival gang member he bolsters his reputation as a formidable gang member, somebody who is willing to retaliate or attack a rival gang member if the need arises.”

The detective was asked “what would a Norteno [who was confronted with a Sureno who was wearing ‘Norteno colors’] be responsible to do in order to help protect or promote his Norteno gang?” He responded: “... the wearing of [Norteno colors by a member of a rival gang] can be taken as a form of disrespect by the gang. In [appellant's] circumstance, ... it can easily be interpreted as a ... sign of disrespect and his job when a rival gang member disrespects his gang is him to act and defend the gang and its honor if you will.” He further opined that “in defending the gang's honor[,] ... the primary criminal activity” would be “[a]n assault” on the rival gang member.

DISCUSSION

Sufficiency of the Evidence Supporting the Gang Enhancement

Appellant contends the evidence was insufficient to support the gang enhancement.

The same standard governs review of the sufficiency of evidence in juvenile cases as in adult criminal cases. (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 540.) Under that standard, “we review the whole record to determine whether *any* rational trier of fact could have found the essential elements of the crime ... beyond a reasonable doubt. [Citation.]⁴ The record must disclose substantial evidence to support the verdict—i.e., 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.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the [trier of fact] could reasonably have deduced from the evidence. [Citation.] ‘Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]’ [Citation.] A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support”’ the jury’s verdict. [Citation.]” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

⁴ Insertions added by this court are placed in brackets and italicized to distinguish them from the bracketed insertions appearing in the original material.

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, subd. (b)(1).) We consider the two elements of the gang enhancement separately.

“Benefit, Direction, Association” Element

As indicated above, the People presented evidence of the following: The Surenos and the Nortenos are rival criminal street gangs, and appellant was a member of the Norteno gang. Shortly before the assault, appellant asked Brandon if he was a Sureno, and when Brandon denied Sureno membership, appellant asked him if he was “positive” about that. From this evidence it is reasonably inferable that appellant suspected Brandon was a member of a rival gang, and that is why he attacked him shortly thereafter.

In addition, the People’s expert witness opined that the attack on Brandon benefited appellant’s gang because such an attack would serve to enhance appellant’s reputation as one who would attack or retaliate against a rival gang member “if the need arises.” Admittedly, the expert, in his brief testimony—our summary in the factual statement above represents the sum total of the evidence as to how the instant offense would benefit appellant’s gang—did not explain *how* such a reputation would benefit the Nortenos. (Compare *In re Daniel C.* (2011) 195 Cal.App.4th 1350, 1363 (*Daniel C.*) [expert testified that the accused committed a robbery “to further the interests of the Norteno gang on the premise that it was a violent crime, and gangs commit violent crimes in order to gain respect and to intimidate others in their community”].) Nonetheless, in our view, it is reasonably inferable that as rival gangs, the Nortenos and Surenos would come into conflict with each other, and that a Norteno gang member’s reputation for willingness to engage violently with persons associated with the Sureno gang would be

helpful to the Nortenos' cause. Therefore, substantial evidence supports the conclusion appellant committed the instant offense for the benefit of a criminal street gang.

"Specific Intent" Element

As indicated above, the People must show that appellant committed the instant assault "with the specific intent to promote, further, or assist in any *criminal conduct by gang members*" (§ 186.22, subd. (b)(1), italics added.) Thus, the gang enhancement "applies when a defendant has personally committed a gang-related felony with specific intent to aid members of that gang." (*People v. Albillar* (2010) 51 Cal.4th 47, 68 (*Albillar*)). In *Daniel C.*, *supra*, 195 Cal.App.4th 1350, where a gang enhancement was imposed in connection with a robbery adjudication, the appellate court, in addressing the minor's challenge to the sufficiency of the evidence supporting the specific intent element of the gang enhancement, stated, "This issue involves a review of the record to determine if there is evidentiary support for two necessarily implied findings: (1) appellant had the specific intent when he committed the robbery to 'promote, further or assist' (2) gang members who themselves were engaged in criminal conduct." (*Id.* at p. 1359.)

"[W]e routinely draw inferences about intent from the predictable results of action. We cannot look into people's minds directly to see their purposes. We can discover mental state only from how people act and what they say." (*People v. Margarejo* (2008) 162 Cal.App.4th 102, 110.) Appellant was a gang member who, in the presence of appellant's two friends, confronted Brandon about his gang affiliation, took Brandon's sweater at knifepoint, and demanded his shoes. Appellant's gang affiliation was clearly communicated shortly before he assaulted Brandon. The message appellant conveyed was one of intimidation: that his gang predominated. Intimidation paves the way for future criminal activity by reducing the likelihood of resistance from victims. On these

facts, substantial evidence supports the conclusion appellant had the specific intent to promote, further, and assist in criminal conduct by gang members.

Daniel C.

Appellant likens the instant case to *Daniel C., supra*, 195 Cal.App.4th 1350, 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: the appellant and three other young men. (*Ibid.*) All "were wearing clothing with an element of red on it." (*Ibid.*) An expert witness testified that the color red is associated with the Nortenos gang. (*Id.* at p. 1356.) During an interview with police, Daniel indicated his companions did not know he intended to go into the store to take alcohol without paying for it. (*Id.* at p. 1357.) An expert witness opined that Daniel and one of the truck's occupants were "active participant[s]" in the Norteno gang, and that one of the other persons detained with Daniel was a "Norteno affiliate." (*Id.* at p. 1355.) The expert further opined that the crime was "gang-related," in part, because "the commission of violent crimes benefits a gang because it earns the gang respect, in that members of the community hear about the crime, become afraid of the gang, and are thereby encouraged to permit the members to commit other crimes without confronting them or reporting them to the police." (*Id.* at p. 1356.)

The appellate court upheld the juvenile court's finding that the minor committed the offense "in association with" (§ 186.22, subd. (b)(1)) a criminal street gang on the

basis of the following: Daniel and two of his companions had gang connections, Daniel knew of the gang membership of one of them, and all three who entered the store were wearing clothing with red on it. (*Daniel C.*, *supra*, 195 Cal.App.4th at pp. 1358-1359.) The court held, however, that the evidence was insufficient to support the specific intent element. The court found fault with the expert’s opinion that the crime was committed to benefit appellant’s gang: “[N]othing in the record indicates that appellant or his companions did anything while in the supermarket to identify themselves with any gang, other than wearing clothing with red on it. No gang signs or words were used, and there was no evidence that [the store manager] or any of the other persons who witnessed the crime knew that gang members or affiliates were involved. Therefore, the crime could not have enhanced respect for the gang members or intimidated others in their community, as suggested by [the expert].” (*Id.* at p. 1363.)

In *Daniel C.*, it appears, the court attempted to apply the following principles: “[T]he 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 Act⁵ only if the crime is “gang related.”’ [Citation.] Not every crime committed by gang members is related to a gang.” (*Albillar*, *supra*, 51 Cal.4th at p. 60.) “[I]t is conceivable that several gang members could commit a crime together, yet be on a frolic and detour unrelated to the gang.’ [Citation.]” (*Id.* at p. 62.)

Appellant contends appellant’s assault on Brandon, like Daniel’s crime, had nothing to do with gang affiliations. Rather, appellant argues, his attack on Brandon “was a purely heat-of-passion response to a highly personal matter,” presumably related

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

to a previous altercation and/or offensive remarks Brandon made about appellant's family.

Daniel C., however, is inapposite. Nothing about Daniel and his companions, with the exception of the red on their clothing—an ambiguous factor—suggested gang involvement. Here, by contrast, appellant questioned Brandon pointedly and repeatedly as to whether Brandon was a Sureno, i.e., a member of a rival gang. It is reasonable to infer that this would have communicated to Brandon that appellant's subsequent misconduct, including the knife assault, was based on appellant's suspicion that Brandon was a member of the Sureno gang. This factor supports the expert's opinion that the assault would have contributed to appellant's reputation as a "formidable" gang member and thus would have benefited the Nortenos, appellant's gang, by showing that appellant was willing to attack or retaliate against a person he thought was a member of a rival gang. Moreover, the juvenile court reasonably could have concluded, based on the gang expert's testimony, that a contributing factor in the attack was that appellant believed Brandon, who appellant suspected was a Sureno, acted disrespectfully toward appellant's gang and that a violent reaction was necessary to uphold the "honor" of the Nortenos. Under the principles of appellate review summarized above, the court was not compelled to discount the evidence of appellant questioning Brandon concerning his gang status and conclude that appellant committed the instant offense for some personal, non-gang-related reason.

Great Bodily Injury Enhancement

Appellant contends, and the People concede, that the juvenile court, by including in appellant's maximum period of physical confinement time for both the 10-year gang enhancement and the three-year great bodily injury enhancement, violated section 1170.1, subdivision (g) (section 1170.1(g)), which prohibits the imposition of more than

one enhancement for the infliction of great bodily injury on the same victim in the commission of a single offense. We agree.

Section 1170.1(g) provides, in relevant part: “When two or more enhancements may be imposed for the infliction of great bodily injury on the same victim in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense.”

Section 12022.7 sets forth various sentence enhancements for the infliction of great bodily injury while committing or attempting a felony. Subdivision (a), the relevant provision in this case, provides: “(a) Any person who personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for three years.” (§ 12022.7, subd. (a).)

Section 186.22, subdivision (b)(1), specifies that 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” is subject to a sentence enhancement. Subparagraphs (A) through (C) set forth the actual enhancements: subparagraph (A) provides for a two-, three-, or four-year enhancement unless subparagraphs (B) or (C) apply; subparagraph (B) provides for a five-year enhancement if the underlying felony is a “serious felony,” as defined by section 1192.7, subdivision (c); and subparagraph (C), the relevant provision here, provides for a 10–year enhancement if the underlying felony is a “violent felony,” as defined by section 667.5, subdivision (c).

Section 667.5, subdivision (c), in turn, lists a number of offenses which qualify as “violent” felonies. As relevant here, a “violent felony” includes “[a]ny felony in which the defendant inflicts great bodily injury on any person other than an accomplice which

has been charged and proved as provided for in Section 12022.7” (§ 667.5, subd. (c)(8).)

Here, appellant’s infliction of great bodily injury on a single victim subjected him to a three-year enhancement under section 12022.7, subdivision (a). The same infliction of great bodily injury on the same victim also turned appellant’s underlying assault offense into a “violent felony” under section 667.5, which subjected him to a 10–year enhancement under section 186.22, subdivision (b)(1)(C). Thus, the juvenile court imposed two enhancements for appellant’s infliction of great bodily injury on the same victim in the commission of a single offense. As the parties agree, under section 1170.1(g), the court should have imposed only the greatest of those enhancements. (*People v. Gonzalez* (2009) 178 Cal.App.4th 1325, 1332.)

DISPOSITION

We reverse the disposition order and remand the matter to the juvenile court to restructure appellant’s maximum period of physical confinement so as not to violate section 1170.1, subdivision (g). The judgment is affirmed in all other respects.