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

In re IGNACIO L., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

IGNACIO L.,

Defendant and Appellant.

F066850

(Super. Ct. No. 11JQ0061B)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. James LaPorte, Judge.

Arthur L. Bowie, 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 Levy, Acting P.J., Cornell, J., and Peña, J.

At a contested jurisdiction hearing, the juvenile court found true allegations that appellant, Ignacio L., a minor, committed assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4); count 2)¹ and was an active participant in a criminal street gang (§ 186.22, subd. (a); count 3), and 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 Appellant admitted an allegation that he possessed cocaine (Health & Saf. Code, § 11350, subd. (a); count 4).

The court continued appellant as a ward of the court, ordered him committed to the Kings County Juvenile Academy Impact Program for a period not to exceed one year but not less than 180 days; declared appellant's maximum period of physical confinement to be 11 years 2 months, based on the instant offenses and offenses adjudicated in prior wardship proceedings; and imposed various terms and conditions of probation.

On appeal, appellant contends the evidence was insufficient to support his adjudications of the instant offenses and the true finding on the gang enhancement. We affirm.

FACTS

The Instant Offenses

Miguel M. (Miguel) testified to the following: On January 16, 2013 (January 16), he had just gotten out of school and was crossing the street, walking toward the van in

¹ Except as otherwise indicated, all statutory references are to the Penal Code.

² Section 186.22, subdivision (b)(1) defines a sentencing enhancement which adds specified penalties 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[.]” We refer to this enhancement as the “gang enhancement.”

which his brother and sister-in-law were sitting, waiting to pick him up, when appellant, Juan A. (Juan) and a person Miguel identified as Alex “were passing.” Appellant said nothing, but Juan “started yelling ‘scrapa.’”³ This made Miguel angry, so he walked to the van, left his backpack there and “followed [the three] around a corner” Miguel intended to “sucker punch” Alex from behind, but when he got within an arm’s length of Alex, Alex turned around. At that point, Miguel “got into a fighting stance,” and “all of a sudden” Alex stabbed him. When Alex stabbed Miguel, appellant and Juan, who had been standing about five feet away, ran off.

Sergio M. testified to the following: He is Miguel’s brother. On January 16 he went to Miguel’s high school to pick him up, and parked across the street from the school. Miguel came out of the school and walked toward the van where Sergio was waiting, and as Miguel approached the van, three persons who were walking nearby “began saying things to Miguel.” They told Miguel “to go to the alley so they could fight.” When asked if all three persons were saying things to Miguel, Sergio responded, “I can’t tell you exactly.”

Miguel “became upset.” He walked to the van, “threw [his] things inside” and began following the three persons who had been walking nearby.

Sergio’s wife told him to go after Miguel so he would not get hurt, and Sergio got out of the van and “went around the corner after Miguel.” At some point thereafter, when Miguel got within three feet of the three persons he was following, all three turned around, Miguel took a fighting stance, and one of the three stabbed him. Later that day, Sergio spoke with a police officer but he did not tell the officer “the three subjects turned around and ran straight at Miguel.”

³ “Scrapa” and “scrap” are derogatory terms for members of the Sureño criminal street gang. (See *People v. Stone* (2009) 46 Cal.4th 131, 134; *People v. Torres* (2008) 163 Cal.App.4th 1420, 1423.)

Sergeant Darren Pearson of the Avenal Police Department testified he spoke with Sergio on the day of the incident, at which time Sergio stated that “just prior” to Miguel being stabbed, “he [Sergio] saw three individuals turn around and run at Miguel,” and that “when Miguel fell,” the three persons “immediately ran.”

Defense investigator Ben Velo testified that Sergio told him that after one of the three persons at the scene with Miguel “made what appeared to be a stabbing-like motion” and Miguel was injured, the other two persons appeared to be “surprised” and “[s]hocked that their friend had stabbed the victim.”

Misty Kincaid testified to the following: On January 16 she was at Avenal High School with her husband, Sergio, for the purpose of picking up Miguel when he got out of school. As Miguel was “crossing the street to [get] into the van,” three persons “walked in front of him” and said things like ““Come on, scrap, I want to fight you.””⁴ Kincaid “wasn’t sure who said or didn’t say it.” Miguel walked to the van, dropped off his backpack and “took off walking.” Kincaid told her husband to go after Miguel, and after he got out of the van she, driving the van, followed. “[B]y the time [she] got there it [had] all happened.” She “didn’t see any actual fight”

Miguel testified he suffered a wound to “the back of [his] shoulder” that required “four staples.” Sergeant Pearson testified he observed “what appeared to be a stab wound to the left portion of [Miguel’s] back.”

Gang Evidence

The parties stipulated that the groups known as the Norteños and the Sureños each meet the statutory definition of a “criminal street gang” as that term applies to the gang enhancement and the substantive offense of active participation in a criminal street gang. The parties also stipulated that City of Avenal Police Officer Vicki Jones was qualified to

⁴ See footnote 3, *ante*, page 3.

testify as an expert on “[N]orteno gang activity” in Kings County. Officer Jones testified to the following:

She was one of the investigating officers in the instant case.⁵ Appellant told Jones he was with Juan and Alexis A. (Alexis) “at the scene of the fight” on January 16.⁶ Jones opined that appellant and Juan are members of the Norteños. On January 16, Alexis was wearing items of clothing of a design and color commonly worn by Norteño gang members.

Miguel told Jones he believed appellant, Juan and Alexis “did not like him because he talks to [S]ureno gang members.” Jones opined that if Miguel talked to Sureños, he would be perceived by Norteños as an “associate” of the Sureños. The Norteños and Sureños are rival gangs.

Jones further opined, in response to a series of hypothetical questions, that if three persons “who associate themselves” with the Norteños were to encounter a person they believed “associate[d]” with the Sureños, and if one of the three stabbed the suspected Sureño associate, that act would benefit the Norteños because “[i]t would instill fear in any members of the public [who] were nearby and therefore help the [N]orteno gang members to gain [the] respect [of] the public and rival gang members.”

It would be “reasonable to expect” that in a fight between members of the Norteños and the Sureños “a weapon may be involved[.]” In such fights, the injuries “are usually serious” because “the more violent the act, the more respect that the gang member will receive.”

⁵ The remainder of the “Gang Evidence” portion of our factual summary is taken from Jones’s testimony.

⁶ There is no dispute that Alexis is the person Miguel identified as Alex. We refer to this person hereafter as Alexis.

It is “typical[]” for Norteño gang members to “hang around with or associate with other[] [Norteño gang members] when they intend to commit crimes because there’s strength in numbers”

DISCUSSION

As indicated above, appellant challenges the sufficiency of the evidence supporting his adjudications of (1) aggravated assault and (2) active gang participation, and (3) the true finding on the gang enhancement.

Standard of Review

In determining whether the evidence is sufficient to support a finding in a juvenile court proceeding, the reviewing court is bound by the same principles as to the sufficiency and 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: “[I]n reviewing the sufficiency of the evidence to support a conviction, [we determine] ‘whether from the evidence, including all reasonable inferences to be drawn therefrom, there is any substantial evidence of the existence of each element of the offense charged.’ [Citations.]” (*People v. Crittenden* (1994) 9 Cal.4th 83, 139, fn. 13.) Substantial evidence is “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.” (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) “The appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citations.]” (*Ibid.*) ““If the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. [Citation.]” [Citation.]” (*Id.* at p. 1054.)

“[A] reviewing court resolves neither credibility issues nor evidentiary conflicts. [Citation.] Resolution of conflicts and inconsistencies in the testimony is the exclusive

province of the trier of fact. [Citation.]” (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) “Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment” (*People v. Cantrell* (1992) 7 Cal.App.4th 523, 538.)

Aggravated Assault (Count 2)

One who aids and abets an offense is guilty as a principal. (§ 31 [defining principal as “[a]ll persons concerned in the commission of a crime ... whether they directly commit the act constituting the offense, or aid and abet in its commission, or, not being present, have advised and encouraged its commission”].) The People argued at the jurisdiction hearing that appellant was guilty of assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(4)) because he aided and abetted in Alexis’s assault of Miguel.

Appellant first argues the evidence was insufficient to support the conclusion he aided and abetted in an assault committed by Alexis because, he asserts, Alexis, in stabbing Miguel, acted in self-defense, and therefore did not commit an assault. We disagree.

Even if acting in self-defense, Alexis was entitled to use only that force that was reasonable under the circumstances. (*People v. Minifie* (1996) 13 Cal.4th 1055, 1065.) The use of excessive force negates any claim of self-defense. (*People v. Hardin* (2000) 85 Cal.App.4th 625, 629-630.) The infliction of a stab wound requiring four staples against an unarmed person was not reasonable under the circumstances.⁷

⁷ The People argue appellant’s self-defense contention fails for the additional reason that Alexis “provoked Miguel’s reaction by yelling gang slurs at Miguel.” (See *People v. Hill* (2005) 131 Cal.App.4th 1089, 1101, 1102, disapproved on another ground in *People v. French* (2008) 43 Cal.4th 36, 48, fn. 5 [self-defense requires a reasonable fear of imminent harm, and “a quarrel provoked by a defendant, or a danger which he has voluntarily brought upon himself by his own misconduct, is not sufficient to support a

Appellant also argues that the evidence is insufficient to establish he was guilty of the count 2 assault as an aider and abettor because, he asserts, “[t]here was absolutely no evidence that [appellant] said anything, did anything, or encouraged anyone before or during the confrontation, and was shocked and surprised when Alex stabbed Miguel” Again, we disagree.

“[A] person aids and abets the commission of a crime when he or she, acting with (1) knowledge of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages or instigates, the commission of the crime.” (*People v. Beeman* (1984) 35 Cal.3d 547, 561.) “Among the factors that may be considered in determining aiding and abetting are: presence at the crime scene, companionship, and conduct before and after the offense.” (*In re Juan G.* (2003) 112 Cal.App.4th 1, 5, fn. omitted; accord, *In re Lynette G.* (1976) 54 Cal.App.3d 1087, 1094-1095.)

“Furthermore, under the “natural and probable consequences” doctrine, an aider and abettor is guilty not only of the offense he or she intended to facilitate or encourage, but also any reasonably foreseeable offense committed by the person he or she aids and abets.” (*People v. Gonzales and Soliz* (2011) 52 Cal.4th 254, 296.) “But ‘to be reasonably foreseeable “[t]he consequence need not have been a strong probability; a possible consequence which might reasonably have been contemplated is enough....” [Citation.]’ [Citation.]” (*People v. Medina* (2009) 46 Cal.4th 913, 920.) “The precise consequence need not have been foreseen.” (*Id.* at p. 927.) “A reasonably foreseeable consequence is to be evaluated under all the factual circumstances of the individual case [citation] and is a factual issue to be resolved by the [trier of fact].” (*Id.* at p. 920.)

reasonable apprehension of imminent danger”). We need not address this claim because we reject appellant’s claim that Alexis acted in self-defense on the basis discussed above.

Here, the court reasonably could have concluded the following from the uncontradicted evidence: Appellant, Juan and Alexis, members of the Norteño gang, walked together in the vicinity of Miguel, at which point at least one of appellant's companions, although not appellant, addressed Miguel, who would have been considered by Norteño gang members to be an associate of the rival Sureño gang, with a gang epithet. Miguel followed and shortly thereafter Alexis stabbed Miguel, and Alexis, appellant and Juan fled the scene together.

In addition, although Sergio testified he did not see—and did not tell the investigating officer he saw—appellant and his companions “run at” Miguel, Sergeant Pearson testified Sergio told him exactly that. Under the principles of appellate review summarized above, we resolve this conflict in the evidence in favor of the judgment and conclude the evidence was sufficient to establish that immediately before the stabbing, appellant and his two companions rushed Miguel. And from this evidence, considered in conjunction with evidence summarized above of the conduct of appellant and his companions before and after the assault, the juvenile court reasonably could have concluded that appellant intended to assist Alexis in an assault on Miguel.

In addition, the court heard expert testimony that it was “reasonable to expect” that weapons would be used in a fight between members of the Norteños and the Sureños and that injuries in such fights are “usually serious.” From this evidence the court reasonably could have concluded further that a natural and probable consequence of Alexis's assault on Miguel was the use of force likely to produce great bodily injury. Thus, on this record, the evidence was sufficient to establish appellant's guilt as aider and abettor in the commission of the count 2 assault.

The Gang Enhancement

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).)⁸ The standards that govern review of the sufficiency of the evidence supporting convictions also apply to enhancements. (*People v. Albillar* (2010) 51 Cal.4th 47, 59-60 (*Albillar*).

Appellant contends the evidence was insufficient to establish the specific intent element of the gang enhancement.⁹ In support of this claim he argues “there was absolutely no evidence that [he] was doing anything but walking home from school at the time of the alleged incident”; he “did not make any gang slurs toward Miguel or speak to him or anyone else”; he did not “respond when Miguel attempted to assault Alex”; and he “appeared surprised and shocked according to the witnesses at the time Alex defended himself against Miguel’s assault.”

Appellant’s challenge to the sufficiency of the evidence supporting the specific intent element is without merit. In *Albillar*, our Supreme Court stated: “[I]f substantial evidence establishes that the defendant intended to and did commit the charged felony with known members of a gang, the jury may fairly infer that the defendant had the specific intent to promote, further, or assist criminal conduct by those gang members.” (*Albillar, supra*, 51 Cal.4th at p. 68.) Here, there was evidence of the following: as indicated above, appellant aided and abetted in the assault on Miguel; Juan was present at the scene, addressed Miguel with a derogatory term for Sureño gang members, and was a member of the rival Norteño gang; Alexis, the perpetrator of the assault, was wearing clothing of a sort associated with the Norteño gang; appellant was a member of the

⁸ We refer to these two elements, respectively, as the “benefit element” and the “specific intent element.”

⁹ By not challenging the sufficiency of evidence supporting the benefit element, appellant implicitly concedes the sufficiency of the evidence supporting that element.

Norteños; and gang members typically commit crimes in the company of members of their gang. From this evidence, it is reasonably inferable that appellant committed the count 2 assault with the specific intent to promote, further and assist criminal conduct by persons known to him to be fellow gang members. Therefore, substantial evidence supports the gang enhancement.

Active Participation in a Criminal Street Gang (Count 3)

“The elements of the gang participation offense in section 186.22[, subdivision](a) are: First, active participation in a criminal street gang, in the sense of participation that is more than nominal or passive; second, knowledge that the gang’s members engage in or have engaged in a pattern of criminal gang activity; and third, the willful promotion, furtherance, or assistance in any felonious criminal conduct by members of that gang.” (*People v. Rodriguez* (2012) 55 Cal.4th 1125, 1130.)

Appellant contends the evidence was insufficient to establish the third of these elements because, he asserts, Alexis was not guilty of assault and, even assuming Alexis’s guilt, “[appellant] had absolutely nothing to do with that event.”¹⁰ We disagree. First, from the evidence that Alexis was wearing clothing associated with the Norteño gang and was in the company of two Norteño gang members, it is reasonably inferable that Alexis was a member of the Norteño gang. Second, as demonstrated above, the evidence was sufficient to establish that Alexis committed an assault and that appellant aided and abetted in that crime. Therefore, there was substantial evidence that appellant willfully furthered, assisted and/or promoted felonious conduct by a gang member.

DISPOSITION

The judgment is affirmed.

¹⁰ By not challenging the sufficiency of evidence supporting the other two elements of the offense, appellant implicitly concedes the sufficiency of the evidence supporting these elements.