

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL DANIEL GARCIA,

Defendant and Appellant.

G048407

(Super. Ct. No. 11CF3033)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Steven D. Bromberg, Judge. Affirmed.

Patrick J. Hennessey, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina and Kristen Kinnaird Chenelia, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant Manuel Daniel Garcia, Joseph Montgomery, and Adrian Barrera of robbery and attempted robbery. The jury also found true sentence enhancement allegations that these crimes were committed for the benefit of, at the direction of, or in association with “17th Street,” a criminal street gang, and that defendant personally used a deadly weapon. The trial court struck the criminal street gang and deadly weapon enhancements for sentencing purposes only, and sentenced defendant to a three-year term for the robbery, plus a concurrent two-year term for the attempted robbery. Defendant challenges the sufficiency of the evidence to prove the gang enhancement. We reject this challenge.

FACTS

Around midnight on November 6, 2011, Aaron Anguiano and Christopher Martinez were walking on Harbor Boulevard near 17th Street in Santa Ana. A gray Suburban pulled into a parking lot in front of them, partially blocking the sidewalk, and three males got out and approached them. The males asked, “What do you guys have on you? Where are you guys from?” Defendant was holding a serrated knife pointed at Anguiano. Barrera said to Anguiano, “Give me all your shit.” Barrera patted down Anguiano’s shorts, and took his cell phone and keys, but left his empty wallet. Anguiano was scared. Martinez was also patted down but nothing was taken from him. He was also scared by the knife.

Montgomery was standing a few feet behind defendant and Barrera acting as a lookout. Defendant punched Anguiano in the jaw with a closed fist and said, “Now turn and walk.” Anguiano and Martinez walked to a motel and called the police.

Defendant, Montgomery and Barrera were found nearby a short time later in the gray Suburban. Anguiano’s cell phone was on the back seat. Anguiano’s keys were in Barrera’s pocket. A knife was found about 75 yards from the parked Suburban. Anguiano identified defendant and Barrera as two of the three individuals that robbed him, and identified the knife as the one used in the robbery.

Detective Jorge Lopez testified as an expert on criminal street gangs.

He opined 17th Street was a criminal street gang in Santa Ana with about 150 members in November 2011. 17 Street's claimed territory is south of the 22 Freeway, north of Hazard Avenue, east of Euclid Street, and west of Newhope Street, and includes portions of Garden Grove. The robbery of Martinez and Anguiano took place about half a mile from 17th Street territory in Hard Times gang territory. Hard Times is a 17th Street rival.

Detective Lopez explained criminal street gangs use respect as a status mobility system predicated on their commission of violent crimes. Gang members believe status and respect are based on the number of individuals that fear them. This fear in the community helps the gangs commit crimes because people are reluctant to cooperate with authorities in fear of retaliation. Violent crimes increase the individual gang member's status, instill fear in the community and elevate the whole gang's status.

A gang's status also keeps rival gangs from invading their territory on account of their reputation and fear of being assaulted. If a gang is perceived as weak, a rival will claim their territory. For instance, maintaining control over certain areas associated with narcotics sales may be particularly important to gangs as a revenue source for the gang. At the same time, committing crimes in a rival's territory will elevate a gang's status.

"Putting in work" for a gang means committing crimes for the benefit of the gang. This elevates the gang member's status in the gang, demonstrates dedication and commitment to the gang, and builds trust with other members of the gang. Gang members join by "criming in" or committing a crime for the gang, "jumping in" and being assaulted by members of the gang, or "walking in" when they are just accepted due to familial relations.

Gang members commit crimes with other gang members because they can trust them not to inform the police. "Backing up" means supporting fellow gang members by assisting in crimes to provide moral support. There are repercussions to

gang members who do not backup fellow gang members. As gang members become more seasoned, they often take on more advisory roles and allow the newer recruits to commit crimes.

Detective Lopez opined Barrera was at least an associate, if not a member, and Montgomery was a member of 17th Street. He also opined defendant was an associate of 17th Street. He found it significant defendant committed the crimes with Barrera and Montgomery, demonstrating they trusted him. Defendant's violent behavior with the knife may have been "criming in" to 17th Street, and it shows he is committed to the gang, possibly enhancing his status from an associate to a member.

Based upon a hypothetical mirroring the facts of this case, Detective Lopez opined the crimes were committed for the benefit of and in association with a criminal street gang. He explained 17th Street received the tangible benefits of the phone and keys. They also received the intangible benefits by committing a violent crime in rival gang territory, and earning respect in their gang and enhancing their reputation in the community. Also, an associate criming into the gang benefits the gang by adding another member.

Finally, Detective Lopez explained the crimes were committed in association with a criminal street gang because they involved at least one member and two associates working in conjunction and operating together. One was the lookout, another held the knife, and the third patted the victims down and took their property. This conduct also furthered and promoted criminal conduct by gang members.

DISCUSSION

Defendant challenges the sufficiency of the evidence to support the jury's true findings on the criminal street gang enhancements. (Pen. Code, § 186.22, subd. (b).) Specifically, he contends there was virtually no evidence the crimes were committed for the benefit of 17th Street, and the contrary opinion of Detective Lopez is just speculation. We disagree.

“[T]he reviewing court must review the whole record in the light most favorable to the judgment to determine whether it contains substantial evidence from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. [Citation.] If the circumstances reasonably justify the jury’s finding, the reviewing court may not reverse the judgment merely because it believes that the circumstances might also support a contrary finding. [Citation.] For evidence to be ‘substantial’ it must be of ponderable legal significance, reasonable in nature, credible and of solid value. [Citation.]” (*People v. Aispuro* (2007) 157 Cal.App.4th 1509, 1511.)

“In making our determination, we focus on the whole record, not isolated bits of evidence. [Citation.] We 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. [Citation.] We will not reverse unless it clearly appears that on no hypothesis whatever is there sufficient substantial evidence to support the jury’s verdict. [Citations.]” (*People v. Upsher* (2007) 155 Cal.App.4th 1311, 1322.) We review the sufficiency of the evidence to support a true finding on an enhancement under the same standard as for a conviction. (See *People v. Vy* (2004) 122 Cal.App.4th 1209, 1224.)

Penal Code section 186.22, subdivision (b) imposes additional or alternative punishments for felony offenses committed “for the benefit of, at the direction of, or in association with a criminal street gang,” and “to promote, further, or assist in any criminal conduct by gang members.” (*Id.*, subd. (b)(1).) Collateral effects of the crime, including respect or fear of the gang and revenge, have all been found to constitute a “benefit” to the gang. (See *People v. Gardeley* (1996) 14 Cal.4th 605, 619; *People v. Olguin* (1994) 31 Cal.App.4th 1355, 1384.) A specific intent to promote, further, or assist in any criminal conduct by gang members is required, but a specific intent to benefit the gang is not. (*People v. Morales* (2003) 112 Cal.App.4th 1176 (*Morales*).)

Morales is particularly instructive. In that case, the defendant and two fellow gang members committed a robbery and other offenses. Based upon a

hypothetical question, the gang expert testified the crimes were committed for the benefit of, at the direction of, or in association with a criminal street gang because “they involved three gang members acting in association with each other. The gang provided ‘a ready-made manpower pool’ That is, one gang member would choose to commit a crime in association with other gang members because he could count on their loyalty. They would ‘watch his back’ “The crime would benefit the individual gang members with notoriety among the gang, and the gang with notoriety among rival gang members and the general public.” (*Morales, supra*, 112 Cal.App.4th at p. 1197.)

Morales rejected the defendant’s argument that there was insufficient evidence that he committed the offenses to *benefit* his gang, and instead noted the gang expert’s focus was on “a crime committed, not just by a gang member, but by several gang members, acting in association with each other. Also, [the expert] did not testify that such a crime necessarily would benefit the gang, merely that it would be committed *either* for the benefit of, *or* at the direction of, *or* in association with the gang.” (*Morales, supra*, 112 Cal.App.4th at p. 1197.)

Morales also rejected the defendant’s argument that reliance on evidence one gang member committed a crime in association with other gang members is circular. “Arguably, such evidence alone would be insufficient, even when supported by expert opinion, to show that a crime was committed for the *benefit* of a gang. 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.” (*Morales, supra*, 112 Cal.App.4th at p. 1198.)

Finally, *Morales* set aside the defendant's argument there was insufficient evidence of specific intent, as opposed to benefit, direction or association. "Again, specific intent to *benefit* the gang is not required. What is required is the 'specific intent to promote, further, or assist in any criminal conduct by gang members' Here, there was evidence that defendant intended to commit robberies, that he intended to commit them in association with Flores and Moreno, and that he knew that Flores and Moreno were members of his gang. . . . It was fairly inferable that he intended to assist criminal conduct by his fellow gang members." (*Morales, supra*, 112 Cal.App.4th at p. 1198.)

All of the same can be said in this case. Here, defendant and two fellow gang members or associates, Montgomery and Barrera, committed a robbery and an attempted robbery. Based upon a hypothetical, Detective Lopez testified the crimes were committed for the benefit of and in association with 17th Street, because they involved at least one member and two associates working in conjunction and operating together. Seventeenth Street provided a ready-made manpower pool of members or associates that could be trusted not to inform the police and to provide backup. In addition, crimes would benefit defendant, Montgomery and Barrera with notoriety within 17th Street. And the crimes would benefit 17th Street with notoriety in the community, and among rival gang members, particularly since the crimes were committed in rival gang territory.

So we reject defendant's argument there was insufficient evidence that he committed the offenses to *benefit* 17th Street. Here, as in *Morales*, the gang expert's focus was on crimes committed by several gang members or associates, acting in association with each other. Also here, as in *Morales*, Detective Lopez testified the crimes were committed for the benefit of *and in association* with 17th Street, not just for the benefit of 17th Street. Admittedly, defendant, Montgomery and Barrera could have been on a frolic and detour unrelated to 17th Street, but we note their crimes in this case started with the classic gang challenge, "Where are you guys from?"

And, to the extent defendant argues there was insufficient evidence of specific intent, we reiterate specific intent to *benefit* 17th Street is not required. “What is required is the ‘specific intent to promote, further, or assist in any criminal conduct by gang members’” (*Morales, supra*, 112 Cal.App.4th at p. 1198.) There was evidence defendant intended to commit the robbery and attempted robbery, in association with Montgomery and Barrera, and he knew they were members or associates of 17th Street. Thus, the jury could reasonably infer defendant intended to assist their criminal conduct.

We are also not persuaded by defendant’s argument a gang expert’s opinion must be supported by additional evidence demonstrating the crime was committed to benefit a gang. (See *People v. Ochoa* (2009) 179 Cal.App.4th 650; *People v. Ramon* (2009) 175 Cal.App.4th 843; *People v. Albarran* (2007) 149 Cal.App.4th 214; *In re Frank S.* (2006) 141 Cal.App.4th 1192.) The California Supreme Court has more recently held: “‘Expert opinion that particular criminal conduct benefited a gang’ is not only permissible but can be sufficient to support the Penal Code section 186.22, subdivision (b)(1), gang enhancement. [Citation.]” (*People v. Vang* (2011) 52 Cal.4th 1038, 1048.)

In any event, all of these cases are distinguishable on other grounds. *People v. Ochoa, supra*, 179 Cal.App.4th 650 and *In re Frank S., supra*, 141 Cal.App.4th 1192 both involved crimes committed by one gang member, acting alone, not multiple gang members acting together. In *People v. Ramon, supra*, 175 Cal.App.4th at page 851 the gang expert “simply informed the jury of how he felt the case should be resolved,” and, not surprisingly, the appellate court held this to be an improper expert opinion on the ultimate issue to be decided. No such improper opinion was given in this case. And *People v. Albarran, supra*, 149 Cal.App.4th at page 228 involved neither the sufficiency of the expert's opinion nor a substantial evidence issue. Instead, the appellate court held the gang evidence was irrelevant to the underlying charges and extraordinarily prejudicial.

DISPOSITION

The judgment is affirmed.

THOMPSON, J.

WE CONCUR:

ARONSON, ACTING P. J.

FYBEL, J.