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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

S.G.,

Defendant and Appellant.

G049062

(Super. Ct. No. DL035354)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gregory W. Jones, Judge. Affirmed.

John F. Schuck, 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, William M. Wood and Marvin E. Mizell, Deputy Attorneys General, for Plaintiff and Respondent.

Minor S.G. appeals from a juvenile court's order finding he committed felony assault by means of force likely to cause great bodily injury for the benefit of, at the direction of, or in association with a criminal street gang (Pen. Code, §§ 245, subd. (a)(4), 186.22, subd. (b)). He challenges the sufficiency of the evidence to prove his identity as one of several members of the Varrio Chico criminal street gang who assaulted Nickolas Vera on July 20, 2013. We find the evidence sufficient to support the juvenile court's finding and affirm the judgment.

FACTS

Prosecution Evidence

In July 2013, Vera lived in a second floor apartment on Calle Canasta in San Clemente. Sometime between 4:00 and 5:30 p.m. on July 20, Vera was on the front porch of his apartment when he saw S.G. and another minor in front of his apartment smoking marijuana out of an apple. He recognized the young men. He had seen them hanging around his apartment on several occasions, and he had asked them to not smoke marijuana near his apartment at least twice before.

Although Vera's prior requests had gone unheeded, he went downstairs to talk to S.G. and his comrade about their smoking. When he got downstairs, Vera told S.G. and his friend that a little girl was having a birthday party nearby. He "asked them nicely, can you guys go across the street." S.G. and his compatriot asked Vera if he was related to someone named Jacob, and Vera said he was Jacob's cousin and he did not want any trouble. Vera thought S.G. and his companion seemed "pretty cool" with his request.

However, another juvenile, F.R., who had been standing on the other side of the street, walked up to Vera, cussed at him, and threatened to start a fight. Vera again said he did not want any trouble and turned to walk away. F.R. came up behind Vera and punched him in the right eye. Puzzled, Vera asked, "You know, what is up?" F.R. backed away, but then repeatedly yelled, "Varrio Chicos," and "Come on. Come on.

Don't be a pussy.” At the same time, F.R. raised his hands and made gang signs. Vera testified he had been “confronted” by members of Varrio Chico “since the first day [he] moved in.” While F.R. issued challenges, S.G. and the other young man moved to the sidewalk and watched.

Vera walked to his apartment and told his uncle, Eric Boessler, what had happened. Vera asked Boessler to “come down because I didn't feel like they were going to leave any time soon, like they were going to hang around, so I thought maybe if he came down with me that they might leave.” He rejected the option of calling police because he had “called the police plenty of times They don't answer the calls. So I didn't feel like it was necessary.” Vera handed Boessler a five pound military press bar from his workout equipment and said, “Hold onto this. Come with me.”

Vera and Boessler walked downstairs together. When they reached the first floor, Vera saw approximately five young men, including S.G. standing nearby. The young men, all with their heads shaved, were dressed in matching black or white shirts and Dickies pants. One of the members of the group walked up to Vera, pressed his chest against Vera's chest, and shoved Vera. Vera shoved him back and told him to “chill out and get away.” Then the entire group circled Vera, and after some pushing and shoving, a melee ensued. Vera was pushed or pulled to the ground while members of the group repeatedly kicked or punched him in the head and body.

After about 45 seconds, someone yelled, “Police are coming,” and the group scattered. Vera and Boessler went back to their apartment. Vera grabbed a towel to stop blood from running down his head, and called the police. After waiting about 40 minutes, Vera's grandparents took him to the hospital.

Vera was treated for black eyes and a fractured eye socket, a broken nose, a puncture wound in his left side, damage to his hand, and multiple lacerations and contusions. An Orange County deputy sheriff talked to Vera at the hospital. At the time, Vera reported that only one person had assaulted him.

About three hours later, Vera returned to his apartment. F.R. and other young men Vera recognized as his attackers were waiting for him. F.R. and some of the other young men approached Vera and surrounded him. One of them said, ““Is everything cool? Do we have a problem?”” Vera did not want any trouble so he replied, ““No, man. I just want you guys to leave me and my family alone.”” Vera shook hands with each member of the group and walked to his apartment. As he did so, other young men surrounded Vera’s grandparents’ car and threatened them.

Vera called the police. When police officers failed to respond to his call within 10 minutes or so, Vera left his apartment and spent the night with family. He moved out of the apartment two or three days later.

Vera did not identify S.G. from either of two photographic lineups shown to him after the incident. At trial, Vera testified that in looking at the photographs he was not 100 percent sure of his identification, but he definitely recognized S.G. in the courtroom as one of the people involved in the assault.

Boessler testified he was outside the apartment he shared with Vera and talking to someone when he saw S.G. and some other young men punch and kick Vera. He had seen S.G. loitering in the area on numerous occasions before the beating. Boessler also identified S.G. from a photographic lineup as one of the people that beat up his nephew.

On August 2, sheriff’s deputies searched the apartment S.G. shared with his parents, little sister and another relative. S.G. was at the apartment at the time. S.G. also lived on Calle Canasta, just a couple of hundred yards away from Vera’s apartment. S.G.’s Facebook account was open on his computer. The deputies found photographs and/or drawings consistent with S.G. being an associate or member of Varrio Chico. S.G. and F.R. were later arrested, but F.R. is not a party to this appeal.

Gang Expert Testimony

Orange County Sheriffs Deputy David Pultz testified as the prosecution's gang expert. Pultz testified Varrio Chico is a traditional Hispanic criminal street gang with its origins in a late 1960's and early 1970's car club and between 40 and 100 active members at any one time. He also explained the primary activities of Varrio Chico are the commission of murders, assaults with deadly weapons, and robberies, and testified about two predicate crimes involving members of Varrio Chico.

Pultz explained the meaning of several terms as they apply to Hispanic street gangs, including "jumped-in" (membership), "turf" (a specific geographical area claimed by the gang), "alliances and rivals" (friends and enemies), respect (reputation and influence), "posting up" (sentry duty in a gang's claimed turf), monikers (nicknames), "tagging" (gang-related graffiti), tattoos, and "backup" (assist other gang members).

Pultz also testified Varrio Chico claims the City of San Clemente as its turf, and the area where the assault occurred is known as the "Golden Ghetto." Based on his review of various police reports of prior contacts with S.G., his older brother D.G. who is also a member of Varrio Chico, and F.R., Pultz opined that S.G. and F.R. were active participants in Varrio Chico on July 20. When presented with a hypothetical question mirroring the facts of the assault on Vera, Pultz testified the assault was for the benefit of, at the direction of, or in association with Varrio Chico.

Defense

S.G.'s father, M.G., and his mother, A.G. testified to S.G.'s activities on the afternoon of July 20. A.G. testified she left home for work at 5:00 a.m. S.G. was asleep in her bedroom when she got home at 3:00 p.m., and he stayed in the room until 6:00 p.m. when he took a bath. Around 7:00 p.m., A.G. took a bath and S.G. went into the living room. After her bath, A.G. took S.G. to a birthday party. Nothing appeared out of the ordinary that evening.

M.G. testified his son was home around 1:00 or 2:00 p.m. when M.G. arrived from work. M.G. found S.G. lying on the bed in M.G. and A.G.'s bedroom. During the next five to six hours, M.G. changed clothes, got something to eat, watched a soccer game, took a shower, and returned to the living room to watch more television. M.G. testified S.G. remained in their home until approximately 6:30 p.m. when M.G. and A.G. went to a party. M.G. reported that nothing seemed unusual about S.G.'s appearance during the day.

S.G. testified he woke up around noon on July 20. He went to play video games in his parents' bedroom, and later switched to watching television. Around 1:00 p.m., he fell back asleep. At 3:00 p.m., he got up to eat. A short time later, he returned to his parents' bedroom and slept until 6:00 or 6:30 p.m. By then, S.G. said his parents left to attend a party.

Around 6:30 p.m., S.G. decided to walk down the street to the vicinity of Vera's apartment. He and F.R. and another minor smoked marijuana for about 30 minutes. At about 7:00 p.m., Vera jumped out of a passing van, walked up to S.G. and his friends, and said, "I don't want anymore problems and the police are on their way." S.G. testified he went home shortly after Vera's comment. S.G. denied smoking marijuana in front of Vera's apartment earlier than 7:00 p.m., and he denied taking part in the assault on Vera. He admitted Vera had chastised him about his public marijuana smoking on prior occasions.

S.G. also said he was familiar with Varrío Chico and he has friends in the gang, but he never told any of the officers that he backs up Varrío Chico gang members. He denied posting gang-related pictures to his Facebook account, and he did not know the meaning of a posted conversation with F.R. about "fishing."

F.R. also testified. He denied seeing Vera on July 20 and denied participating in the assault on that day.

DISCUSSION

S.G. argues insufficient evidence ties him to the assault on Vera. In his view, only Boessler testified he was present, and Boessler's testimony is insufficient to sustain the juvenile court's finding. We disagree.

“The same standard governs review of the sufficiency of evidence in adult criminal cases and juvenile cases: we review the whole record in the light most favorable to the judgment to decide whether substantial evidence supports the conviction, so that a reasonable fact finder could find guilt beyond a reasonable doubt. [Citations.]” (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 540.) As pertinent here, we resolve neither issues of witness credibility nor conflicts in the evidence on a claim of insufficiency of the evidence. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) “Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.]” (*Ibid.*) Nothing short of physical impossibility or inherent improbability diminishes the weight of a single witness's testimony, and the “testimony of a single witness is sufficient to support a conviction.” (*Ibid.*; see Evid. Code, § 411 [“Except where additional evidence is required by statute, the direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact”].)

The juvenile court found Vera and Boessler credible, although for different reasons. With respect to Vera, the juvenile court stated, “I believe that testimony that he gave was credible and compelling and honest. He was an intelligent individual and reported things as I honestly believe he saw, and I believe him.” The juvenile court specifically rejected S.G.'s contention Vera had some bias or motive to implicate S.G. in a crime the minor did not commit.

As for Boessler, the juvenile court acknowledged that Boessler did not seem educated or sophisticated. In fact the juvenile court believed Boessler to be incapable of “telling a lie without getting caught by even the most elementary cross-

examination.” The court also observed that Vera and Boessler gave testimony consistent with each other, while S.G. and his parents did not.

But perhaps the most important observation by the juvenile court was that S.G.’s testimony “probably rank[ed] at the top of all the witnesses that I have ever heard as an attorney or on the bench as being unbelievable. It was pathetically unbelievable.” We accept the juvenile court’s credibility assessments, and S.G. points to nothing in the record that contradicts the court’s conclusion. Consequently, the judgment is affirmed.

DISPOSITION

The judgment is affirmed.

THOMPSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

BEDSWORTH, J.