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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. MICHAEL NATERAS, Defendant and Appellant.	B275692 (Los Angeles County Super. Ct. No. BA434640)

APPEAL from a judgment of the Superior Court of Los Angeles County, Katherine Mader, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

Michael Nateras challenges the imposition of gang enhancements following his conviction by jury on one count of shooting at an occupied motor vehicle (Pen. Code, § 246)[1] and one count of assault with a firearm (§ 245, subd. (a)(2)). Appellant contends there is insufficient evidence of a connection between gang subsets to support the gang allegation. He also challenges the gang enhancement jury instruction, and he contends the gang expert's testimony was inadmissible hearsay testimony and violated the confrontation clause. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. *Prosecution Evidence*

A. *The Shooting*

In the afternoon of March 15, 2015, Edwin Morales, Veneta Sharma, and their two-year-old daughter Leyla left a hospital emergency room in Los Angeles and drove to visit Morales' mother, who lived nearby. They visited with Morales' mother until around 8:30 p.m., when they left to return to their home in Nevada. Sharma began to feel ill, so Morales exited the 60 freeway and drove down Cesar Chavez Avenue to look for a motel where they could spend the night. Morales stopped the car near the intersection of Rowan Avenue and Hammel Street and looked at his phone to try to find a place to stay.

After Morales stopped the car, he saw four men approaching his car. One of the men, later identified as appellant, approached Morales'

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[1] Unspecified statutory references are to the Penal Code.

door and said, "What you got there?" Morales saw something in appellant's hand. Morales became concerned and pulled the car into a driveway. When he started to back out of the driveway, he saw the four men approaching the car again. He saw appellant and codefendant Alfaro holding guns.

Morales backed out of the driveway and quickly drove down the street to try to get away from the area. As he drove away, he saw flashes in his rear view mirror and heard three gunshots. He saw appellant and Alfaro standing in the middle of the street shooting at the car. Morales called 911 and pulled over near a bus depot. While he was on the phone, Morales saw in his rear view mirror that the men had stopped shooting and were talking and picking something up from the ground. One of the men ran away. Alfaro and one man went inside a house, and appellant stood outside the house with his foot on a gate. When appellant started walking toward Morales again, Morales drove away and pulled into a nearby Pizza Hut parking lot. Sheriff's deputies arrived at the Pizza Hut and asked Morales to follow them to the street where the shooting occurred.

B. *Investigation*

Morales pointed deputies to the house where the shooting occurred and where two of the men ran after the shooting. Around 9:30 p.m., deputies used the patrol car's PA system to announce that anyone inside the house should come out. Appellant and Alfaro exited from the garage.

Morales identified appellant and Alfaro as the shooters. Morales was certain of his identification of both appellant and Alfaro. Sharma also identified appellant as the shooter and as the person who asked, "What do you got there?" She was positive about her identification. Later that night, Morales and Sharma identified appellant and Alfaro in photographic lineups they were shown at the sheriff's station.

Deputies tested appellant's and Alfaro's hands for gunshot residue. Los Angeles County Sheriff's Department Criminalist Kristina Fritz found some particles characteristic of gunshot residue on both appellant and Alfaro. Fritz testified that the presence of gunshot residue did not necessarily indicate that a person discharged a firearm, but that the person handled a firearm, discharged one, or was in proximity to one.

Around 3:00 a.m., deputies searched the house and garage pursuant to a search warrant. Appellant lived in the house with his mother. Alfaro lived with appellant's sister and their son in the garage, which had been converted into a residence. The deputies found a hole in the ceiling in the garage that contained a sock with a semiautomatic firearm wrapped in it.

Deputy Sheriff Juan Sanchez detained appellant in his patrol car during the investigation. He testified that appellant was able to walk and get in and out of the patrol car with no assistance.

C. *Gang Expert Testimony*

Los Angeles County Sheriff's Detective Noel Lopez testified as a gang expert on the Gage Maravilla gang, which was formed in the

1980s. Detective Lopez had known of the gang for 11 to 12 years and had spoken with members of the gang, investigated crimes committed by the gang, and spoken with victims of those crimes. As of March 15, 2015, Gage Maravilla had about 89 documented gang members. Detective Lopez stated that the gang had two different cliques, Maravilla Rifa and Gage Boys.[2] Maravilla Rifa was "an older generation," and Gage Boys "a newer generation," but both were "under the Gage Maravilla umbrella." The house where appellant and Alfaro were found was in Gage Maravilla territory. Detective Lopez described the house as a "hang out" for gang members, stating that there had been shootings and incidents at the house in the past.

The gang's primary activities included attempted murder, assault with a deadly weapon, robbery, vehicle theft, possession of narcotics and firearms, and graffiti. Gage Maravilla's rivals included Dog Pound, KAM, and Lot 13.

Alfaro was a member of the Dog Pound gang and therefore would normally not be in Gage Maravilla territory unless there was a family connection with the opposing gang. Alfaro was the father of the child of appellant's sister, Yadira Colin. Alfaro had admitted being a member of Dog Pound to Detective Lopez and had gang tattoos related to Dog Pound. Although Dog Pound was a rival gang to Gage Maravilla, Detective Lopez believed that Alfaro was an associate of Gage Maravilla

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[2] On cross-examination, Detective Lopez stated that "Maravilla is just an umbrella for East [Los Angeles]. There's maybe about 20 different Maravilla gangs," and "Not all of them get along with each other."

because he lived in Gage Maravilla and "hangs out with Gage Maravilla gang members." Detective Lopez testified that sometimes members of rival gangs who were bound by family ties committed crimes together.

The prosecution introduced evidence of two predicate offenses to establish a pattern of criminal gang activity. The first was a certified minute order reflecting the June 2013 conviction of Elias Nateras (Elias), appellant's brother, for attempted murder. Elias had admitted to Detective Lopez that he was a member of Gage Maravilla with a moniker of "Smiley." Detective Lopez testified that the attempted murder offense was committed for the benefit of the gang, stating that Elias fired a gun at a party in Gage Maravilla territory where gang members from a different neighborhood were in attendance. Detective Lopez was on duty at the time and responded to the location of the shooting.

The second was a certified minute order reflecting the December 2013 conviction of Joaquin Joshua Munoz for possession of a firearm. Detective Lopez had had "numerous contacts" with Munoz, and Munoz had admitted to Detective Lopez that he was a member of Gage Maravilla with a moniker of "Vago." Munoz was walking with appellant in a rival gang's neighborhood carrying a firearm. Detective Lopez believed this offense benefitted the Gage Maravilla gang because Munoz was carrying a gun to protect himself in rival gang territory.

Detective Lopez was familiar with appellant and had spoken with him 20 to 30 times. In most of their encounters, appellant had admitted he was a member of Gage Maravilla. Appellant had several tattoos that Detective Lopez stated were related to the Gage Maravilla and Gage

Boys gang: on his hands, he had the letters "GB" and the word "Boys," which stood for "Gage Boys"; on his neck, he had the tattoo "Gage MV," which stood for "Gage Maravilla"; and on his shin he had the letters "MLV," which stood for "Maravilla." Detective Lopez believed that appellant was active in the Gage Maravilla gang, based on his own observations of appellant and conversations with community members, as well as on appellant's arrest record.

Given a hypothetical based on the facts of this case, Detective Lopez opined that the offense was committed for the benefit of the Gage Maravilla gang. He explained that the crime was committed in a Gage Maravilla neighborhood and instilled fear in the community and in rival gangs. The crime also raised the gang member's status in the neighborhood. Detective Lopez testified that gang members do not always call out the name of their gang when committing a crime, and the fact that a gang was not named in this hypothetical did not mean the crime did not benefit the gang. He explained that, similar to tattoos, the crime itself indirectly promotes the gang.

On March 10, 2015, Detective Lopez investigated a shooting in which appellant was the victim. Detective Lopez interviewed appellant about the shooting at a sheriff's station on March 16, 2015. He walked with appellant approximately 20 feet to an interview room, and appellant did not have any problems walking. Appellant told Detective Lopez he believed he was shot by a member of the Krazy Ass Mexican gang, a rival gang. Detective Lopez testified that after a shooting by a rival gang, retaliation would be expected.

II. *Defense Evidence*

Yadira Colin (Yadira), Maria Colin (Maria), and Patricia Nateras (Patricia) were called as witnesses on behalf of both defendants.

Yadira lived in the converted garage with Alfaro, their son, and Yadira's goddaughter. On March 15, 2015, around 8:00 p.m., Yadira was at home with her son, her goddaughter, Alfaro, and appellant. They all had been home together since about 3:00 in the afternoon. Appellant was in bed resting because he had been shot a few days earlier and was injured. Yadira testified that appellant needed assistance walking because of his injury. Alfaro was making dinner. Around 9:00 p.m., they heard the police calling everyone out of the house, so they all exited the house. Yadira had not heard any gunshots. Yadira testified that appellant was not a member of Gage Maravilla, stating that she had never seen appellant's tattoos before. However, she acknowledged that her brother Elias was a member of Gage Maravilla.

Patricia, appellant's mother, testified that appellant was in the converted garage with Alfaro on the afternoon of March 15, 2015. Appellant was suffering from back pain because he had been shot in the back four days earlier. He was forced to lie face down and could not turn himself over because of the pain. According to Patricia, appellant fell asleep around 7:00 p.m. and never left the house. However, Patricia was inside the house at 8:00 p.m. and could not see what was happening in the converted garage. Patricia did not hear any gunshots that night.

Maria, appellant's cousin, lived in the house next door to him. Maria was at a family barbecue behind her house from 5:00 to 8:00 p.m. on the date of the shooting. She did not hear any gunshots that evening.

III. *Procedural Background*

Appellant was charged by information with count 1, shooting at an occupied motor vehicle, and count 3, assault with a firearm.[3] The information further alleged that appellant was released from custody on bail at the time of the offense (§ 12022.1) and that both offenses were committed for the benefit of a gang (§ 186.22, subd. (b)(1)(C), (b)(4)). The jury found appellant guilty of both counts and found the gang allegations to be true.[4] Appellant admitted the on-bail enhancement. Appellant was sentenced on count 1 to life in prison with the possibility of parole, plus two years for the on-bail enhancement. The sentence on count 3 was stayed pursuant to section 654. Appellant filed a timely notice of appeal.

DISCUSSION

Appellant challenges the imposition of the gang enhancement on three grounds. First, he challenges the sufficiency of the evidence to support the true findings. Second, he contends the jury instruction

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[3] Counts 2 and 4 alleged the same offenses against Alfaro.

[4] A mistrial was declared as to Alfaro after the jury was unable to reach a verdict.

failed to accurately set forth the elements of the enhancement. Third, appellant contends his confrontation rights were violated pursuant to *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*).

I. *Sufficiency of the Evidence*

"'In considering a challenge to the sufficiency of the evidence to support an enhancement, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] We presume every fact in support of the judgment the trier of fact could have reasonably deduced from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding.' [Citation.]" (*People v. Resendez* (2017) 13 Cal.App.5th 181, 187–188.)

"Penal Code section 186.20, et seq., also known as the California Street Terrorism Enforcement and Prevention Act (the STEP Act or Act), was enacted in 1988 to combat a dramatic increase in gang-related crimes and violence." (*People v. Prunty* (2015) 62 Cal.4th 59, 66–67 (*Prunty*).) "[S]ection 186.22(b)(1) . . . provides: '[A]ny 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, shall, upon conviction of that felony, in addition and consecutive to the

punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished . . . .'" (*People v. Albillar* (2010) 51 Cal.4th 47, 59.) A criminal street gang is defined as "any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of [certain enumerated] criminal acts . . . , having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity." (§ 186.22, subd. (f).)

In *Prunty*, the California Supreme Court addressed "the type of evidence required to support the prosecution's theory that various alleged gang subsets constitute a single 'criminal street gang' under section 186.22(f)." (*Prunty*, *supra*, 62 Cal.4th at p. 70.) The court held that "when the prosecution seeks to prove the street gang enhancement by showing a defendant committed a felony to benefit a given gang, but establishes the commission of the required predicate offenses with evidence of crimes committed by members of the gang's alleged subsets, it must prove a connection between the gang and the subsets." (*Id.* at pp. 67–68.) "That connection may take the form of evidence of collaboration or organization, or the sharing of material information among the subsets of a larger group. Alternatively, it may be shown that the subsets are part of the same loosely hierarchical organization, even if the subsets themselves do not communicate or work together. And in other cases, the prosecution may show that various subset members exhibit behavior showing their self-identification with a larger group, thereby allowing those subsets to be treated as a single

organization. [¶] Whatever theory the prosecution chooses to demonstrate that a relationship exists, the evidence must show that it is the same 'group' that meets the definition of section 186.22(f)—i.e., that the group committed the predicate offenses and engaged in criminal primary activities—and that the defendant sought to benefit under section 186.22(b). But it is not enough . . . that the group simply shares a common name, common identifying symbols, and a common enemy. Nor is it permissible for the prosecution to introduce evidence of different subsets' conduct to satisfy the primary activities and predicate offense requirements without demonstrating that those subsets are somehow connected to each other or another larger group." (*Id.* at pp. 71-72, fns. omitted.)

In *Prunty*, the defendant identified as a member of the Norteño gang and claimed membership in a particular Norteño subset—the Detroit Boulevard Norteños. The prosecution's theory was that the defendant committed an assault to benefit the overarching Norteño gang. The prosecution's gang expert testified about the primary activities of the Norteño gang. However, the two predicate offenses described by the gang expert involved activities of different Norteño subsets. In the first, Varrio Gardenland Norteños were convicted for the murder and attempted murder of members of the Del Paso Heights Norteños. In the second, members of the Varrio Centro Norteños shot at a former Norteño gang member. No evidence was offered connecting the subsets' activities to each other or to the Norteño gang in general.

The court found sufficient evidence regarding the illicit primary activities of the Norteño gang in general. (*Prunty*, *supra*, 62 Cal.4th at

p. 82.) "But where the prosecution's evidence fell short is with respect to the predicate offenses." (*Ibid.*) Because there was no evidence that these subsets were connected to one another or to the overarching Norteño group, the court held that this evidence was insufficient to show that the subsets comprised a criminal street gang. (*Ibid.*)

Appellant relies on *Prunty* to argue that there is insufficient evidence of a connection between Gage Maravilla and Gage Boys to establish the existence of a criminal street gang within the meaning of section 186.22, subdivision (f). He contends that Detective Lopez never explained the relationship between the Maravilla gang and Gage Maravilla.[5] He further argues that, because he had a tattoo for Gage Boys, he was a member of that gang, and there was no evidence of any relationship among the various subsets of the Gage Maravilla gang as required by *Prunty*. We find *Prunty* distinguishable and therefore conclude the evidence is sufficient to support the enhancement.

Similar to *Prunty*, the prosecution's theory was that appellant committed the offense to benefit the overarching gang, Gage Maravilla. (See *Prunty*, *supra*, 62 Cal.4th at p. 82.) However, unlike *Prunty*, the

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[5] As to appellant's contention that there was no evidence regarding the distinction between Maravilla and Gage Maravilla, the record shows that Detective Lopez initially called the gang "the Maravilla gang." Later in his testimony, he stated that he encountered Maravilla gang members on a daily basis. The prosecutor asked, "How long have you known of this gang," and he replied, "Are you referring to Gage Maravilla?" Following this exchange, Detective Lopez referred to the gang as Gage Maravilla. There was no effort on cross-examination to determine whether there was a distinction between Maravilla and Gage Maravilla, and it appears that Detective Lopez was merely using a shorthand when calling the gang "Maravilla."

predicate offenses here also involved the overarching gang. The predicate offenses in *Prunty* were committed by subsets of the Norteño gang. By contrast, the predicate offenses Detective Lopez described were committed by people who had admitted being members of Gage Maravilla, not a subset of the gang. Thus, the prosecution here did not attempt to prove the existence of one criminal street gang by relying on evidence involving different subsets.

Appellant cites *People v. Nicholes* (2016) 246 Cal.App.4th 836 (*Nicholes*), in which "the prosecution's theory was that the entire Norteño gang—not a specific subset—satisfied the definition of a criminal street gang." (*Id.* at p. 840.) *Nicholes* is inapposite. There, "[t]he prosecution's theory and evidence in this case was not meaningfully different than the prosecution's theory and evidence in *Prunty*." (*Ibid.*) Reasoning that "*Prunty* requires that the prosecution, in a case involving Norteños and testimony that Norteños operate through subsets, introduce evidence specific to the subsets at issue," the court found the prosecution's evidence insufficient to support the gang enhancement. (*Id.* at p. 848.)

Unlike *Nicholes*, the prosecution's theory here did not involve testimony that Gage Maravilla operates through subsets. Instead, the prosecution's theory and evidence focused on the activities of the Gage Maravilla gang as a whole. Appellant cites Detective Lopez's testimony that there are "about 20 different Maravilla gangs," and "Not all of them get along with each other." Notwithstanding this statement, the rest of the prosecution's evidence involved the Gage Maravilla gang as a

whole, and the prosecution's theory was that appellant was a member of the Gage Maravilla gang. Detective Lopez testified about the activities of the Gage Maravilla gang as a whole. He further testified that the two predicate offenses were committed by self-admitted Gage Maravilla gang members and that appellant had admitted being a member of Gage Maravilla on numerous occasions.

Appellant had tattoos referring to both Gage Maravilla and Gage Boys. He argues on appeal that this must mean he is a member of Gage Boys, a subset of Gage Maravilla, and not Gage Maravilla itself. This is not supported by the record. Unlike *Prunty*, in which the defendant was a self-admitted member of a subset of the Norteño gang, Detective Lopez stated that appellant had admitted on numerous occasions being a member of Gage Maravilla, the overarching gang. Thus, unlike the defendant in *Prunty*, who self-identified as a member of the Detroit Boulevard Norteños (*Prunty*, *supra*, 62 Cal.4th at p. 82), the evidence here is that appellant self-identified as a member of the overarching Gage Maravilla gang.

Prunty applies "where the prosecution's theory of why a criminal street gang exists turns on the conduct of one or more gang subsets, not simply to those in which the prosecution alleges the existence of 'a broader umbrella gang.'" (*Prunty*, *supra*, 62 Cal.4th at p. 71, fn. 2.) Here, the prosecution's theory was that appellant was a member of Gage Maravilla and committed the offense to benefit the Gage Maravilla gang. Detective Lopez testified about the primary activities of the Gage Maravilla gang, and the predicate offenses constituted evidence of those activities by members of the Gage Maravilla gang.

The evidence is sufficient to support the jury's true finding on the gang allegation.

II. *Jury Instruction*

Appellant challenges the gang enhancement jury instruction.[6] He contends that the holding of *Prunty* requires that the jury instruction on the gang enhancement be modified to include a finding regarding gang subsets.

The jury was instructed on the gang enhancement as follows, pursuant to CALCRIM No. 1401: "A criminal street gang is any ongoing organization, association, or group of three or more persons, whether formal or informal: [¶] 1. That has a common name or common identifying sign or symbol; [¶] 2. That has, as one or more of its primary activities, the commission of vandalism, narcotics sales, assault with deadly weapons and attempted murder; [¶] AND [¶] 3. Whose members, whether acting alone or together, engage in or have engaged in a pattern of criminal gang activity." A pattern of gang activity was defined to mean: "1. The commission of or conviction of any combination of two or more of the following crimes: Attempted

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[6] There was no objection to the jury instructions. "'Generally, a party forfeits any challenge to a jury instruction that was correct in law and responsive to the evidence if the party fails to object in the trial court.' [Citation.]" (*People v. McPheeters* (2013) 218 Cal.App.4th 124, 132 (*McPheeters*).) However, where, as here, a defendant claims that "the instruction is *not* correct in law, and that it violated his federal constitutional rights . . . [the] claim need not be preserved by objection before an appellate court can address the issue." (*Ibid.*)

Murder . . . and Prohibited Possession of a Firearm . . . . [¶] 2. At least one of those crimes was committed after September 26, 1988; [¶] 3. The most recent crime occurred within three years of one of the earlier crimes; [¶] AND [¶] 4. The crimes were committed on separate occasions or were personally committed by two or more persons."

"We determine independently whether a jury instruction correctly states the law. [Citation.] Our task is to determine whether the trial court "'fully and fairly instructed on the applicable law.'" [Citation.] We consider the instructions as a whole as well as the entire record of trial, including the arguments of counsel. [Citation.] If reasonably possible, instructions are interpreted to support the judgment rather than defeat it. [Citation.]" (*McPheeters*, *supra*, 218 Cal.App.4th at p. 132.)

We disagree with appellant's contention. First, as discussed above, this case is distinguishable from *Prunty* because the prosecution here did not rely on evidence regarding different subsets of the gang but instead provided evidence regarding the Gage Maravilla gang. Thus, there was no need for the jury to be instructed on Gage Maravilla subsets. Second, the court in *Prunty* noted that its interpretation of section 186.22, subdivision (f) did not add an element to the statute. (*Prunty*, *supra*, 62 Cal.4th at p. 76, fn. 4.) The jury was properly instructed on the gang enhancement.

III. *Confrontation Clause*

Appellant contends that his confrontation clause rights were violated by Detective Lopez's testimony regarding the predicate offenses

because he relied on hearsay statements, which were inadmissible pursuant to *Sanchez*, *supra*, 63 Cal.4th 665.[7] *Sanchez* held that state hearsay law permits an expert witness to refer generally to hearsay sources of information as a basis for the expert's opinion, but precludes experts from "rely[ing] on case-specific hearsay to support their trial testimony. [Citation.]" (*People v. Williams* (2016) 1 Cal.5th 1166, 1200.) "'Case-specific facts are those relating to the particular events and participants alleged to have been involved in the case being tried.' [Citation.]" (*People v. Burroughs* (2016) 6 Cal.App.5th 378, 406.)

Sanchez "adopt[ed] the following rule: When any expert relates to the jury case-specific out-of-court statements, and treats the content of those statements as true and accurate to support the expert's opinion, the statements are hearsay. It cannot logically be maintained that the statements are not being admitted for their truth. If the case is one in which a prosecution expert seeks to relate *testimonial* hearsay, there is a confrontation clause violation unless (1) there is a showing of unavailability and (2) the defendant had a prior opportunity for cross-examination, or forfeited that right by wrongdoing." (*Sanchez*, *supra*,

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[7] Respondent contends that appellant forfeited his hearsay and confrontation clause claim by failing to object on these grounds at trial. (See *People v. Dykes* (2009) 46 Cal.4th 731, 756 [citing "the general rule that trial counsel's failure to object to claimed evidentiary error on the same ground asserted on appeal results in a forfeiture of the issue on appeal"].) However, "[a]ny objection would likely have been futile because the trial court was bound to follow pre-*Sanchez* decisions holding expert 'basis' evidence does not violate the confrontation clause." (*People v. Meraz* (2016) 6 Cal.App.5th 1162, 1170, fn. 7 (*Meraz*), review granted March 22, 2017, S239442, opn. ordered to remain precedential.) Accordingly, we consider appellant's confrontation clause claims.

63 Cal.4th at p. 686, fn. omitted.) Thus, "a court addressing the admissibility of out-of-court statements must engage in a two-step analysis. The first step is a traditional hearsay inquiry: Is the statement one made out of court; is it offered to prove the truth of the facts it asserts; and does it fall under a hearsay exception? If a hearsay statement is being offered by the prosecution in a criminal case, and the *Crawford* [*v. Washington* (2004) 541 U.S. 36] limitations of unavailability, as well as cross-examination or forfeiture, are not satisfied, a second analytical step is required. Admission of such a statement violates the right to confrontation if the statement is *testimonial hearsay*, as the high court defines that term." (*Id.* at p. 680.)

Appellant contends that Detective Lopez relied on inadmissible hearsay when he testified about the predicate offenses committed by Elias and Munoz. We can easily dispense with appellant's argument regarding the predicate offense committed by Elias because Detective Lopez testified that he was on duty the day of the offense and responded to the scene. Moreover, Elias had admitted his membership in Gage Maravilla to Detective Lopez. Detective Lopez's testimony thus did not violate *Sanchez* because it was based on his personal knowledge, and he was subject to cross-examination. (See *Meraz*, *supra*, 6 Cal.App.5th at p. 1176 [finding that, "unlike the hearsay documents in *Sanchez*, [the gang expert's] testimony was not barred under state or federal law because [the expert] was present during these contacts [with the defendants], had personal knowledge of the facts, and was subject to cross-examination at trial"].)

As to the predicate offense committed by Munoz, we acknowledge appellant's contention that Detective Lopez did not explain the basis for his knowledge regarding this offense. However, as with Elias' conviction, the People introduced into evidence the minute order regarding the offense. The minute order showed that Munoz was convicted following a nolo contendere plea to one count of violating section 29800, subdivision (a)(1), possession of a firearm following conviction of a felony. In *People v. Duran* (2002) 97 Cal.App.4th 1448, the court addressed the defendant's contention that a minute order documenting a conviction "was hearsay and thus inadmissible to prove a predicate offense" for purposes of section 186.22. (*Id.* at p. 1459.) The court concluded that "Evidence Code section 452.5, subdivision (b) creates a hearsay exception allowing admission of qualifying court records to prove not only the fact of conviction, but also that the offense reflected in the record occurred." (*Id.* at p. 1460; see also *People v. Ochoa* (2017) 7 Cal.App.5th 575, 589, fn. 10 [no *Sanchez* violation where a record of conviction was admissible under Evid. Code, § 452.5 and *Duran* to prove someone was affiliated with a gang]; *People v. Villegas* (2001) 92 Cal.App.4th 1217, 1228 [finding the predicate offense sufficiently established, "both by oral testimony and documentary evidence" where a case file proving the predicate offense was introduced].)

The minute order established Munoz's conviction for felony possession of a firearm. In addition, Detective Lopez testified that he had had numerous contacts with Munoz and that Munoz had admitted to him that he was a member of Gage Maravilla. Detective Lopez

accordingly had personal knowledge of Munoz's membership in Gage Maravilla.

Appellant's speculation that Detective Lopez must have relied on inadmissible hearsay statements to support his testimony regarding the predicate offenses does not establish error under *Sanchez*. Appellant has not shown that the People relied on testimonial hearsay to establish the predicate offenses and therefore has failed to show that his confrontation clause rights were violated. (*Sanchez*, *supra*, 63 Cal.4th at p. 680.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

MANELLA, J.

COLLINS, J.