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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL ALVAREZ,

Defendant and Appellant.

2d Crim. No. B283638
(Super. Ct. No. 2013029361)
(Ventura County)

Daniel Alvarez appeals after a jury convicted him of assault with a deadly weapon (Pen. Code,¹ § 245, subd. (a)(1)), and found true an allegation that the crime was committed to benefit a criminal street gang (§ 186.22, subd. (b)(1)). Appellant was sentenced to eight years in state prison. He contends the evidence is insufficient to support his assault conviction. We affirm.

¹ All statutory references are to the Penal Code.

STATEMENT OF FACTS

On the night of August 31, 2012, appellant and fellow Bad Habits gang members Jonathan Griggs, Miguel Perez, Christian Frias, and Justin DeSantiago congregated in the outdoor parking lot of appellant's apartment complex in Oxnard. Rafael Valencia, a Bad Habits associate, was also present. As the men were drinking beer and talking, Perez saw Mark Newcomb and Justin Smith walking toward them on the other side of the street. Newcomb and Smith were returning home from a Mexican restaurant with Christopher Sneed, Megan Green, and Amy Greaves, who were walking about 40 to 50 feet behind them.

Perez told Griggs "there's some fools over there."² Griggs whistled at the group and someone yelled back, "Fuck you." As Newcomb and Smith were crossing the street, Griggs led appellant, Perez, Frias, Valencia, and DeSantiago into the middle of the street to confront them.

Appellant's group surrounded Newcomb and Smith in a half-circle as Griggs repeatedly yelled, "Hey, ese, where do you bang?" Other members of appellant's group yelled, "Do you guys bang," and "Where you fools from?" Smith, who understood they were asking him what gang he was from, replied, "I don't bang." Newcomb told them, "We're 35. We surf. We don't gang bang. We're not from anywhere."

Griggs told Newcomb and Smith, "[N]ext time . . . someone asks where you f-ing bang . . . you better tell them you don't bang, you understand?" Smith replied "[n]o" because he had already told Griggs numerous times that he did not bang.

² In gang parlance, "fools" are suspected members of a rival gang.

At that point, Griggs struck Smith in the chest with a bottle of beer. Newcomb tackled Griggs, slammed him to the curb, and began punching him. After Griggs yelled for help, appellant and his fellow gang members “swarmed” Newcomb. At least three or four of the men in appellant’s group produced knives during the attack, and Newcomb was repeatedly stabbed. Smith ran over to help Newcomb and one of the attackers tried to stab him as well.

Sneed yelled at the attackers to “back off.” The men in appellant’s group turned their attention to Sneed. At least two of the men brandished knives and said, “Let’s get this guy.” After discussing the matter, the men in appellant’s group abandoned their plan to attack Sneed and fled the scene.

Green called 911 to report the stabbing. She told the dispatcher that a group of Hispanic men had been involved in the attack upon Newcomb and that “all of ‘em had knives.” Newcomb was transported to the hospital, where he was treated for stab wounds to his liver, pneumothorax, and spleen.

Griggs suffered a wound to his arm during the assault and was bleeding profusely. Frias, Perez and Valencia drove Griggs to the hospital. When the emergency room staff removed Grigg’s pants, a blood-stained knife fell out of his pocket. The knife was confiscated and given to the police. A security guard also confiscated another knife that was protruding from Perez’s pocket. Perez’s DNA was found on the handle of that knife, and DNA on the blade was linked to both Perez and Newcomb. Appellant’s DNA was recovered from a beer bottle found near the scene of the stabbing.

About an hour after the assault, the police received an anonymous tip to search for the suspects in Apartment 202 at

1453 South Victoria Avenue in Oxnard. Officers went to the apartment, where a woman answered the door and let them in. DeSantiago was found behind a couch in the living room and appellant was found hiding in the bathroom. Appellant was combative with the officers and said, “This is fucking Bad Habits, homie.” Both men were arrested and several items were seized from the apartment. Newcomb’s DNA was subsequently found on a bloody knife recovered from the pocket of a hoodie, and appellant was determined to be a possible contributor to touch DNA found on the blade of another knife recovered from the kitchen counter.

During an in-field showup, Sneed identified appellant as one of the individuals who had participated in the assault of Newcomb. Greaves also identified appellant as being present during the incident but could not specify whether he was personally involved in the assault. Green identified appellant by his clothing, but added that she did not believe he was “actually physically altercating [*sic*].” Smith was unable to identify appellant but stated that “all of ‘em were doing the same thing . . . they all jumped my buddy.”

Oxnard Police Detective John Brisslinger testified as the prosecutions’ gang expert. Detective Brisslinger opined that (1) Bad Habits is a criminal street gang; (2) appellant was an active member of the gang when the stabbing took place; and (3) the crime was committed for the benefit of appellant’s gang. The detective further opined that a gang member asking “Where are you from” is intended to initiate a confrontation followed by an act of violence. If one gang member told a group of his fellow gang members to look at some “fools,” the other members would be expected to follow him and provide backup. Moreover, a gang

stabbing conducted under these circumstances benefits the gang by sending a message that the gang can act together and dominate their opponents.

DISCUSSION

Appellant contends the evidence is insufficient to support his conviction of assault with a deadly weapon. In reviewing this contention, “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.” (*People v. Avila* (2009) 46 Cal.4th 680, 701.) We draw all reasonable inferences in favor of the verdict and presume the existence of every fact the jury could reasonably deduce from the evidence that supports its findings. (*People v. Maciel* (2013) 57 Cal.4th 482, 515.) The same standard applies where the prosecution relies primarily on circumstantial evidence. (*People v. Nelson* (2011) 51 Cal.4th 198, 210.)

Appellant was prosecuted for assault with a deadly weapon on theories that he (1) directly perpetrated the offense by stabbing Newcomb; (2) aided and abetted his fellow gang member’s commission of the offense; and (3) aided and abetted the nontarget offense of challenging another person in a public place to fight (§ 415, subd. (1)), the natural and probable consequences of which was an assault with a deadly weapon. Because the jury returned a general verdict of guilt, the record does not reflect the theory upon which the conviction is premised. Accordingly, we must affirm if there is sufficient evidence to support the conviction on any of the proffered theories. (*People v. Silva* (2001) 25 Cal.4th 345, 370.)

The evidence is sufficient to support appellant's assault with a deadly weapon as an aider and abettor of that offense. The jury was instructed that appellant was guilty on this theory if he "aid[ed], facilitate[d], promote[d], encourage[d], or instigate[d] the perpetrator's commission of th[e] crime." (CALCRIM No. 401.) Factors relevant to this determination included appellant's presence at the scene of the crime and his conduct before, during, and after the offense was committed. (See *People v. Singleton* (1987) 196 Cal.App.3d 488, 492.)

The evidence, viewed in the light most favorable to the judgment, establishes that (1) appellant accompanied Griggs and their fellow gang members in confronting Newcomb's group; (2) gang members are typically armed with weapons when they conduct such confrontations; (3) gang members who participate in this type of confrontation are expected to "back each other up" when called upon to do so; (4) appellant joined his fellow gang members in physically attacking Newcomb after Griggs summoned their help; and (5) some (if not all) of the individuals in appellant's group produced knives that were visible to bystanders. From this evidence, the jury could reasonably infer that appellant expressly intended to aid and facilitate his fellow gang members' stabbing of Newcomb by assisting in his incapacitation and impeding his escape. Appellant's arguments to the contrary essentially overlook the controlling standard of review.

Because the evidence is sufficient to support appellant's conviction on the theory that he aided and abetted his fellow gang members' stabbing of Newcomb, his claim fails regardless of whether his conviction can be sustained upon one of the other two

proffered theories of guilt. (*People v. Silva, supra*, 25 Cal.4th at p. 370.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Gilbert A. Romero, Judge
Superior Court County of Ventura

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