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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Crim. No. B281716  
(Super. Ct. No. YJ38596)  
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

L.O.,

Defendant and Appellant.

L.O. appeals an order of the juvenile court sustaining a Welfare and Institutions Code section 602 petition (“section 602 petition”). The court found L.O., a minor, possessed a firearm, a felony (Pen. Code, § 29610),<sup>1</sup> and live ammunition (§ 29650). We conclude, among other things, that substantial evidence supports

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<sup>1</sup> All further statutory references are to the Penal Code.

the court's finding that L.O. committed these acts for the benefit of a criminal street gang. (§ 186.22, subds. (b) & (d).) We affirm.

### FACTS

In an earlier case, on February 29, 2016, the People filed a section 602 petition alleging that 1) L.O., 15 years old, possessed a firearm in violation of section 29610, a felony (count 1); 2) he possessed live ammunition in violation of section 29650, a misdemeanor (count 2); and 3) he committed these offenses for the benefit of a criminal street gang, the Eight Trey Gangster Crips.

Pursuant to a plea agreement, L.O. admitted the allegations in count 1. The allegations in count 2 and the gang enhancement allegations were dismissed. The juvenile court sustained the petition as to count 1 and imposed probation conditions. One condition prohibited L.O. from associating with the Eight Trey Gangster Crips.

In the present case, on December 30, 2016, Police Officer Romeo Rubalcava, a gang expert, was driving his patrol car in an area the Eight Trey Gangster Crips claim as their territory. He saw L.O. and James Pittman "walking together," "practically shoulder to shoulder." Rubalcava knew Pittman was an Eight Trey Gangster Crips gang member. Pittman had tattoos showing his membership, and he previously told Rubalcava he was a member.

As Rubalcava made a turn, he saw L.O. and Pittman "look back" in his direction. L.O. reached for "his front waistband" and moved towards a parked minivan. He looked through the window of that minivan at police and "then ducked below the window" so he could not be seen by police.

Rubalcava thought L.O. was "hiding something," and he then heard "a metallic sound" that he believed to be "a gun

hitting the ground.” Rubalcava and his partner walked towards that area. L.O. put his hands up and said, “I didn’t do nothing.” The police recovered a loaded .22 caliber “automatic pistol” and ammunition under the minivan.

As the police approached, Pittman walked away from L.O. towards an alley. Rubalcava ordered Pittman to get down on his knees. Pittman did not comply. He ran into the alley, eventually stopped, and was arrested.

Pittman possessed black and blue spray cans, candles, and a black baseball cap with a white letter “T.” The black and blue paint cans were significant because they represented the gang’s colors. The letter “T” on the cap was a gang symbol. The candles were going to be placed “in the alley where someone that is close to that gang died approximately two years ago.” It was going to be “a small little vigil” for that “deceased individual.” Rubalcava testified Pittman was going to the alley to “create a memorial.”

In answering a factual hypothetical question, Rubalcava said possession of the firearm was at the direction of or for the benefit of the Eight Trey Gangster Crips gang. There is a “higher likelihood of some gang-on-gang crime occurring at a memorial site.” The gun could be used “to protect” the person building the memorial.

In the defense case, S.M., L.O.’s “best friend,” testified L.O. did not have a firearm with him that day. L.O. and Pittman had known each other before this incident. They had worked out together with weights.

In the section 602 petition, the People alleged L.O., a minor, possessed a firearm in violation of section 29610 and live ammunition in violation of section 29650, and these offenses were committed “for the benefit of, at the direction of, or in association

with any criminal street gang . . . .” (§ 186.22, subds. (b)(1) & (d).)

The juvenile court sustained the petition. It said the People met their burden to prove “the gang enhancement.” It found L.O. was there to “accompany Mr. Pittman into the alley” and they were going to “erect” a gang “memorial.” The court placed L.O. in a “camp-community placement program” and thereafter in placement at the direction of the probation department. It found the maximum confinement period to be three years eight months.

## DISCUSSION

### *Substantial Evidence*

L.O. contends there is insufficient evidence to establish the section 186.22 gang enhancements. We disagree.

In determining the sufficiency of the evidence, “we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence” to support the findings. (*People v. Albillar* (2010) 51 Cal.4th 47, 60.) We do not weigh the evidence or decide the credibility of the witnesses. (*Ibid.*) We must draw all reasonable inferences in support of the judgment. (*Ibid.*)

The gang enhancement under section 186.22, subdivision (b)(1) provides, in relevant part, “[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 . . . .” with an enhanced sentence. (*People v. Albillar*, *supra*, 51 Cal.4th at p. 59.)

L.O. contends there is no evidence that he is a gang member. But this contention does not support his claim that there is a lack of substantial evidence to support the court's gang enhancement findings. Proof of gang membership is not a necessary "element" of the gang enhancement." (*People v. Valdez* (2012) 55 Cal.4th 82, 132.) The statute relevant here applies "to any person," not solely to gang members. (§ 186.22, subd. (b)(1); *Valdez*, at p. 132.)

L.O. claims his possession of a firearm offense is not sufficient, by itself, to establish a gang enhancement. He contends "there is no evidence [that] construction of the [gang] memorial would promote, further or assist in criminal conduct by gang members." But the trial court found the gang-related "criminal conduct" here was L.O.'s act of carrying the gun accompanied by a gang member in furtherance of a gang mission. Our Supreme Court has held a defendant's "current" offense may be sufficient to support a section 186.22, subdivision (b)(1) gang enhancement without proof that there is or will be "other criminal conduct by gang members." (*People v. Albillar, supra*, 51 Cal.4th at pp. 64-65.) The issue is not whether Pittman's intent to build the memorial was criminal conduct. The issue is whether L.O.'s firearm offense was committed to benefit the gang so as to support the gang enhancement. (*Ibid.*)

Here the trial court could reasonably infer L.O. committed this felony to assist Pittman in a gang ritual for the benefit of the gang. It found Pittman was going to construct a "monument" to honor the memory of a person affiliated with the gang who had been killed in that alley "two years ago." The court said, "So while their putting up a monument in and of itself is not a criminal act . . . , it does continue to promote the influence of a

gang in the area in that they are still in existence and have a presence there and it puts others on notice.”

There is evidence supporting the finding that Pittman intended to construct a gang monument. Rubalcava testified Pittman possessed black and blue spray cans, candles, a black baseball cap with “the large letter ‘T’ in the front in white.” He said the “letter ‘T’ is indicative of the specific Crip gang for that neighborhood.” The black and blue spray cans were consistent with the gang’s colors. The spray cans “were going to be used to spray over the candles. . . . [T]he candles were going to be placed in the alley where someone that is close to that gang died approximately two years ago.” The candles and the baseball cap were going to be “a small little vigil” for that “deceased individual.” Pittman walked in the direction of that alley in gang territory. A trial court may admit expert testimony about “gang culture and psychology.” (*People v. Gonzalez* (2006) 38 Cal.4th 932, 945.) Rubalcava testified Pittman was going to “create a memorial” based on the facts about the items he possessed, where he was going, and the history of what took place in that alley.

L.O. claims that in committing the gun possession offense “he acted alone,” not with Pittman, and his actions were not gang related. But the trial court could reasonably infer that was not the case. It found L.O. was there to “accompany Mr. Pittman into the alley.” It noted their presence together near the alley where the monument was to be constructed. Rubalcava testified L.O. and Pittman were “walking together,” “practically shoulder to shoulder.” When the police arrived, both of them look[ed] back” in the same direction. They were in “Eight Tre[y] Gangster Crip territory,” and L.O. was walking with Pittman who was a member of that gang. Pittman’s gang tattoos showed his membership and he possessed items of special significance to the

gang. Other evidence supports the inference that L.O. and Pittman were acting together, not separately. L.O. had a prior affiliation with Pittman. L.O. and Pittman had known each other before this incident. They would “work out” together with weights, and Pittman had openly embraced his gang affiliation. Pittman’s “fleur de lis” gang tattoo was clearly visible on his “left forearm” when he took the witness stand at trial. The People note the trial court could reasonably infer Pittman knew L.O. possessed the gun from his actions. Pittman walked with L.O., but he moved away from him when the police approached, and then he ran away.

The trial court could also reasonably infer L.O. had the gun to protect Pittman as Pittman constructed the gang memorial site. Rubalcava testified there is “a higher likelihood of some gang-on-gang crime occurring at a memorial site.” Attacking such a memorial would benefit a rival gang. He said L.O. possessed the gun to protect the person who would build the memorial -- Pittman. Rubalcava said L.O.’s offense benefits the gang because it shows “there is a young juvenile who is committed to the gang and willing to take such a risk of carrying a loaded firearm and potentially use it to protect himself, his members, and the other members of that gang.” L.O. was carrying the gun, in gang territory, accompanied by a gang member on a gang mission to build a gang memorial. “This evidence provided sufficient support for the gang expert’s testimony that the carrying of the loaded firearm was for the benefit of the gang.” (*People v. Gonzales* (2015) 232 Cal.App.4th 1449, 1466.)

L.O. contends we should reach a different conclusion from the juvenile court based on some of the evidence in the record. But the issue is not whether some evidence supports L.O.; it is

only whether substantial evidence supports the judgment. “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.” (*People v. Thomas* (1992) 2 Cal.4th 489, 514.) The evidence is sufficient.

DISPOSITION

The judgment is affirmed.

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GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.



Irma J. Brown, Judge

Superior Court County of Los Angeles

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