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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

LEVITIUS DANIEL WRIGHT,

Defendant and Appellant.

B233874

(Los Angeles County  
Super. Ct. No. VA109176)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Philip H. Hickok, Judge. Affirmed.

Marcia C. Levine, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Lance E. Winters, Assistant Attorney General, Linda C. Johnson  
and Robert M. Snider, Deputy Attorneys General, for Plaintiff and Respondent.

Levitus Daniel Wright appeals from the judgment entered following his conviction on one count of first degree murder (Pen. Code, § 187, subd. (a))<sup>1</sup> and one count of attempted murder with premeditation and deliberation (§§ 664/187, subd. (a)). On appeal, he challenges only the sufficiency of the evidence to support the gang enhancement (§ 186.22, subd. (b)(1)(C)). We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On February 6, 2006, around 9:00 p.m., Carl Arline received a telephone call from a friend, Santwone, who was a member of a gang called the B-Bop Bloods. Santwone asked Arline to come to his location on Pace Avenue because Santwone felt he was having a problem with some people he saw there. Arline had been friends with Santwone most of his life. Arline was a member of a rival gang to the B-Bops.

Arline walked to an apartment complex at 93rd Street and Belhaven Avenue that was known as a hangout for the B-Bops. When he arrived, he encountered appellant, who was his childhood friend and a B-Bops member known as “C.K.,” which stood for Crip Killer. Arline mentioned the phone call to appellant, and appellant replied that he was “going to go over there right now.”

Arline and appellant began walking toward Pace Avenue, and they were joined by two other childhood friends, Martis Childs and Markease Williams. Childs and Williams were members of the B-Bops.

As the group walked down Pace Avenue, they saw a group of people standing on the sidewalk in front of a house. The group consisted of Troy Daniel, Joseph Bryant, Trarel Mathis, Jermaine Scorza, and Nikita Wheaton; they were standing outside Wheaton’s house when they were approached by appellant,

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

Arline, Childs, and Williams. Most of the people standing in front of Wheaton's house did not know appellant, Arline, Childs, and Williams. Scorza was concerned that the group approaching them might think Bryant was a member of the Crips because he was wearing blue clothing.

Childs lifted his sweatshirt and revealed a gun in his waistband to the group standing outside Wheaton's house. Appellant asked them where they were from, which was understood to be a gang challenge. Daniel answered that they did not bang or were from nowhere, which meant that they were not gang members.

Appellant tried to "pocket check" the members of the group to see what they had in their pockets. When appellant tried to check Scorza's pocket, Scorza moved appellant's hands away. Appellant suddenly hit Scorza in the neck, knocking him to the ground. When appellant tried to check Bryant's pocket, Bryant also hit appellant's hands away, and a fight broke out between them.

Childs pulled out his gun, moved appellant out of the way, and began shooting at Bryant. Bryant tried to run away, but he fell to the ground. Childs shot Bryant again, and everyone ran away. Mathis was struck by a bullet in his upper back as he ran away. Bryant was killed.

The jury found appellant guilty of one count of first degree murder and one count of attempted murder, and found firearm and gang allegations to be true. Appellant filed a timely notice of appeal.

## **DISCUSSION**

Appellant's sole contention on appeal is that the evidence was insufficient to support the gang enhancement because there was insufficient evidence of the gang's primary activities for purposes of section 186.22, subdivision (f). We

conclude that the evidence was sufficient to support the enhancement and therefore affirm.

“In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]’

[Citation.] We resolve all conflicts in the evidence and questions of credibility in favor of the verdict, and indulge every reasonable inference the jury could draw from the evidence. [Citation.] This standard applies whether direct or circumstantial evidence is involved. [Citation.] It also applies when determining whether the evidence is sufficient to sustain a jury finding on a gang enhancement. [Citations.] Reversal is unwarranted unless “upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].” [Citation.]” (*People v. Mendez* (2010) 188 Cal.App.4th 47, 56.)

Section 186.22, subdivision (f) defines a criminal street gang 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 the criminal acts enumerated in paragraphs (1) to (25), inclusive, or (31) to (33), inclusive, of subdivision (e), 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.”

“The phrase “primary activities,” as used in the gang statute, implies that the commission of one or more of the statutorily enumerated crimes be one of the group’s “chief” or “principal” occupations. [Citation.]’ [Citation.] Proof that a gang’s members consistently and repeatedly have committed criminal activity listed in section 186.22, subdivision (e) is sufficient to establish the gang’s primary

activities. On the other hand, proof of only the occasional commission of crimes by the gang's members is insufficient. [Citation.] Past offenses, as well as the circumstances of the charged crime, have some tendency in reason to prove the group's primary activities, and thus both may be considered by the jury on the issue of the group's primary activities. [Citation.]" (*People v. Duran* (2002) 97 Cal.App.4th 1448, 1464-1465 (*Duran*), quoting *People v. Sengpadychith* (2001) 26 Cal.4th 316, 320, 323-324.)

Appellant relies on *In re Alexander L.* (2007) 149 Cal.App.4th 605 (*Alexander L.*), in which the court held that there was insufficient evidence of the gang's primary activities to sustain the gang allegation. The gang expert in *Alexander L.* testified that he knew the gang had been involved in certain crimes, but there was no evidence of the circumstances of the crimes or how the expert obtained his information. On appeal, the court held that the testimony lacked an adequate foundation because there was no evidence establishing the reliability of the expert's "claimed knowledge of the gang's activities . . . ." (*Id.* at p. 612.)

In *Alexander L.*, the gang expert testified that he knew the gang had been involved in crimes such as assaults, murders, and burglaries, but "[h]e did not directly testify that criminal activities constituted [the gang's] primary activities. Indeed, on cross-examination, [he] testified that the vast majority of cases connected to [the gang] that he had run across were graffiti related." (*Alexander L.*, *supra*, 149 Cal.App.4th at p. 612.)

Here, Sergeant Jason Bates of the Los Angeles County Sheriff's Department testified that he first became aware of the B-Bops in 2000. Since that time, he had arrested B-Bop members and become familiar with members and their families. He also had become familiar with the gang's rivals and allies and with the types of crimes they committed. He testified that the gang had a "common sign or symbol,

which they either tattoo on their body, spray paint on the walls or sidewalks are ‘BBB,’ which is B-Bop Bloods. They’re B-Bop Watts, B-Bop Bloods, and the Bop Boys.” He knew the area the gang claimed as its territory and had frequently seen gang members at a certain apartment building.

Sergeant Bates testified that he had spoken with other officers about the B-Bops during his research for this case. He also testified about the gang’s primary activities, stating: “Primary activities range from vandalism to illegal possessions of firearms; assault with a deadly weapon, firearms; assault with a deadly weapon, hands, feet and fists; robberies; carjacking; vehicle thefts; murder.”

Appellant contends that the evidence is insufficient because Sergeant Bates did not explain how he knew these were the gang’s primary activities, and there was no foundation for his opinion that the gang consistently and repeatedly committed this crimes. We disagree.

Unlike *Alexander L.*, Sergeant Bates directly testified about the gang’s primary activities. Also in contrast to *Alexander L.*, Sergeant Bates testified about his many years of experience with the B-Bops, arresting gang members and familiarizing himself with their families, rivals, and activities. (See *People v. Martinez* (2008) 158 Cal.App.4th 1324, 1330 [finding that the gang expert’s “eight years dealing with the gang, including investigations and personal conversations with members, and reviews of reports suffices to establish the foundation for his testimony”].) “The testimony of a gang expert, founded on his or her conversations with gang members, personal investigation of crimes committed by gang members, and information obtained from colleagues in his or her own and other law enforcement agencies, may be sufficient to prove a gang’s primary activities. [Citations.]” (*Duran, supra*, 97 Cal.App.4th at p. 1465.) We conclude the evidence was sufficient to support the gang enhancement.

**DISPOSITION**

The judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.