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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

VICTOR ECHEAGARA TORRES,

Defendant and Appellant.

B233367

(Los Angeles County  
Super. Ct. No. PA062308)

APPEAL from a judgment of the Superior Court of Los Angeles County, Curtis B. Rappe, Judge. Affirmed.

James M. Crawford, 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, Senior Assistant Attorney General, Scott A. Taryle and Tannaz Kouhpainezhad, Deputy Attorneys General, for Plaintiff and Respondent.

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## INTRODUCTION

Defendant Victor Echeagara Torres was convicted following a jury trial of assault with a firearm (Pen. Code,<sup>1</sup> § 245, subd. (a)(2); count 2) and kidnapping for ransom (§ 209, subd. (a); count 3). The jury found true the allegations of firearm use (§§ 12022.5, 12022.53, subds. (b) & (e)(1)), great bodily injury (§ 12022.7, subd. (a)), and commission for the benefit of a criminal street gang (§§ 186.22, subds. (b)(1)(C), (b)(4)) with respect to each count.<sup>2</sup> The trial court sentenced defendant on count 3 to a term of life without the possibility of parole, plus 10 years for the firearm use enhancement, and stayed sentencing on count 2 under section 654. Defendant appeals, contending the evidence was insufficient to support the gang enhancements. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. *The Crimes*

In June 2008, Miguel Sanchez (Sanchez) arranged for two groups to engage in a drug transaction. The drug transaction went awry; one of the groups lost money. Days later, Sanchez received a telephone call from a man who said Sanchez's half-brother had been kidnapped. Sanchez testified the man demanded \$40,000 in ransom "[b]ecause they did their business and it came out badly. Since they didn't know who the [other] people were they said I [Sanchez] had to pay it." Sanchez realized the man was calling on the cell phone of a woman named "Leslie," who was currently dating Sanchez's half brother.

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

<sup>2</sup> After the jury announced it was unable to reach a verdict on charges of attempted murder and assault with a firearm involving a different victim, the trial court declared a mistrial as to those counts.

Leslie was also the sister of Ritchie Palomo (Palomo), who was in one of the groups involved in the failed drug transaction.<sup>3</sup>

Sanchez told the man he could pay him \$20,000. The man instructed Sanchez to bring the money to a McDonald's restaurant in Pacoima. When Sanchez arrived at the restaurant, he was met by Ernesto Romero (Romero), Palomo and Eddie Alvarez (Alvarez). Romero took the \$20,000 and directed Sanchez to a park where his half-brother would be released. Sanchez recognized Romero's voice as that of the man who had telephoned him earlier. Sanchez drove to the park, and found his half-brother, unharmed.

Romero telephoned Sanchez again five days later and demanded the rest of the \$40,000. Sanchez explained he did not have \$20,000 but offered to give Romero his pickup truck. Romero had Sanchez meet him at a Taco Bell restaurant. This time, Romero was accompanied by Palomo, Ronald Ruiz (Ruiz) and Eric Viveros. Sanchez presented Romero with the pink slip to his pickup truck. However, Romero said they were going to take Sanchez instead and ordered him at gunpoint to drive. At some point, they stopped and transferred Sanchez to a car driven by Palomo. Sanchez was blindfolded and told to lie on the floor of the backseat. The car stopped, and the men led Sanchez into the garage of a house. The men told Sanchez that they wanted the \$20,000 he owed them.

Romero telephoned Sanchez's mother and initially told her to deliver \$20,000 to a Food4Less market for her son's release. Romero then decided Sanchez's mother should deliver the money to a Laundromat. While Romero and Palomo went to meet with Sanchez's mother, defendant, Alvarez and Oscar Andia stayed with Sanchez in the garage and beat him with their hands. Defendant then struck Sanchez in the face with a

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<sup>3</sup> The prosecutor asked Sanchez, "And was Leslie part of or included in one of the groups that you put together so that they can do a drug deal?" Sanchez answered, "She is the sister of one of them." Sanchez later identified Palomo as Leslie's brother, and confirmed his earlier testimony that Palomo "was one of the people . . . in one of the groups that [he] put together to do a drug deal."

gun, and Andia hit him with a broken bottle. Defendant and the others initially told Sanchez they just wanted the money, and he would be released once payment was made. Sanchez was later told he would be killed if the \$20,000 was not paid.

After two days, police responded to the garage and found Sanchez lying on the floor, with his feet bound. Sanchez was transported to the hospital where he received stitches above both of his eyes. Officers recovered a bloody bandana, a loaded handgun and a loaded revolver.

### ***B. Gang Expert Testimony***

Los Angeles Police Officer Michael Yoro testified as a gang expert. He testified that the Latin Times Pacoima (LTP) gang and its affiliated gangs, Cayuga, and the older and larger Pacas Trece gang, exist to commit murder, attempted murder, assault with a deadly weapon, including assault with a firearm, robbery, grand theft auto and narcotics sales in Pacoima and the San Fernando Valley. LTP has within it various subsets or cliques, among them is TDS, which signifies “Take Down Sanfers,” a rival Pacoima gang.

According to Officer Yoro, LTP and affiliated gang members wear tattoos to show their gang identity and allegiance. During his testimony, Yoro reviewed photographs he had taken of defendant’s various tattoos, among them, a three-dotted tattoo under his left eye symbolizing “my crazy life” among gang members; a “TDS” on his left leg and stomach signifying the TDS clique of LTP; a “P” on his shoulder and forearm indicating Pacoima; the word “Pacas” on his head, meaning Pacoima; an “LT” on his shoulders indicating “Latin Times”; and the numbers “818” and “91331” representing the area code and zip code, respectively, associated with Pacoima. In other photographs, Officer Yoro identified similar tattoos worn by Romero, a self-admitted LTP gang member, Alvarez, Palomo, and Ruiz.

The prosecutor then summarized the evidence in the form of a hypothetical, that “[o]ne of the groups [involved in the anticipated drug transaction] is members or people that associate with the [LTP] gang members, and somehow this drug deal goes bad and

[LTP] lose money. [LTP] goes back to the person who set up the meeting, wants money, in fact kidnapped his brother, take [\$]20,000 for his brother, return his brother, and want more money because they believe they're owed more money for the loss that they suffered, and then ultimately kidnap the individual who initially set up the deal and call his family, his mother, demanding ransom. All of the individuals in one way or another are either hanging out or friendly or have tattoos on — some of them have tattoos on them, either showing their allegiance to LTP or to the [clique] TDS . . . and some are using guns, a gun was used to get this individual, this second kidnapped individual, to a location where they held him and then a TDS, of course, some TDS on his stomach is holding him at one point and beats him along with two other individuals and using a weapon, a firearm.”

When asked whether he had an opinion as to whether the crimes were committed for the benefit of a criminal street gang, Officer Yoro opined the kidnapping for ransom was committed for the benefit of and in association with the LTP gang. Officer Yoro testified this evidence supported his opinion because “narcotic sales is the chief primary activity of all gangs. When it comes to narcotic sales, the profits or proceeds can be used to purchase additional narcotics, firearms, what not. The individuals involved in narcotic sales are looked at [by] the members of the gang as the money earners, and they're one of the most respected individuals within the gang. The more you put into the gang for the gang, you will also earn that respect. In regards to the kidnap[ping] or the bad drug deal, how dare they cross the [LTP] gang without thinking that they won't receive any sort of payback or retaliation. As I stated earlier, payback or retaliation can come swift or it can come in time.”

Officer Yoro further testified the kidnapping benefitted the gang by demonstrating to potential “dealmakers” what happens when their promised drug deal sours. The crime also elevates the status of LTP gang members in the community and to their rivals.

## DISCUSSION

Defendant contends the gang enhancements were not supported by substantial evidence. He argues that defendant's membership in the LTP gang was insufficient to establish that the crimes were committed for the benefit of the gang and with the specific intent to promote, further or assist in any criminal conduct by gang members. We disagree.

Section 186.22 is "a provision of the California Street Terrorism Enforcement and Protection Act of 1988, also known as the STEP Act." (*People v. Castenada* (2000) 23 Cal.4th 743, 744-745, fn. omitted.) It provides: "(a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment . . . . [¶] (b)(1) . . . [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, [be punished] in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted . . . ."

Violation of section 186.22, subdivision (a), is a substantive offense, the gravamen of which is participation in the gang itself. (*People v. Ngoun* (2001) 88 Cal.App.4th 432, 436.) Violation of subdivision (b)(1) results in an enhanced sentence. The scienter element of the substantive offense and the enhancement are essentially the same: intent to promote, further, or assist in *any* criminal conduct by gang members. The enhancement has the additional element that the crime to which the enhancement is attached must be gang-related. (*People v. Galvez* (2011) 195 Cal.App.4th 1253, 1260; see also *People v. Albillar* (2010) 51 Cal.4th 47, 56 [distinguishing between the criminal street gang enhancement and substantive offense].) Thus, for the enhancement to be found true, two prongs must be met. First, there must be evidence from which it is reasonable to infer

that the underlying felony was “‘committed for the benefit of, at the direction of, or in association with any criminal street gang.’” (*People v. Gardeley* (1996) 14 Cal.4th 605, 615-616, italics omitted.) Second, there must be evidence that the defendant had “‘the specific intent to promote, further, or assist in any criminal conduct’ by [gang] members.” (*Ibid.*) At issue here is whether there was sufficient evidence that defendant and the other men committed the offenses as gang-related rather than personal crimes.

### **A. For the Benefit of A Criminal Street Gang**

The first prong, requiring evidence from which it can reasonably be inferred the underlying felony was gang-related, can be satisfied by expert testimony. “Expert opinion that particular criminal conduct benefited a gang by enhancing its reputation for viciousness can be sufficient to raise the inference that the conduct was ‘committed for the benefit of . . . a[] criminal street gang’ within the meaning of section 186.22[, subdivision ](b)(1).” (*People v. Albillar, supra*, 51 Cal.4th at p. 63; *People v. Vang* (2011) 52 Cal.4th 1038, 1048.)

In *Albillar*, each of three gang members took turns raping the victim while the other two held her down. All three were convicted of various sex crimes as well as active participation in a criminal street gang (§ 186.22, subd. (a)).) Section 186.22, subdivision (b)(1), enhancements were also found true. (*People v. Albillar, supra*, 51 Cal.4th at p. 54.) Our Supreme Court found the evidence sufficient to establish that the sex crimes were gang-related in two ways: (1) they were committed in association with the gang, and (2) they were committed for the benefit of the gang. (*Id.* at p. 60.) That the crimes were committed for the benefit of the gang was supported by a gang expert’s testimony that “[w]hen three gang members go out and commit a violent brutal attack on a victim, that’s elevating their individual status, and they’re receiving a benefit. They’re putting notches in their reputation. When these [gang] members are doing that, the overall entity benefits and strengthens as a result of it.’ Reports of such conduct ‘rais[e] the[] level of fear and intimidation in the community.’” (*Id.* at pp. 63, 71.)

Here, the testimony of Sanchez and the gang expert provided ample evidence the kidnapping was committed for the benefit of the LTP gang. Four of the six men who participated in the kidnapping, including defendant, self-identified as LTP or TDS gang members in statements to police or through gang-related tattoos. The gang expert testified that selling narcotics is the primary activity of LTP. Palomo, one of the four LTP or TDS gang members, was part of the group that suffered from the ill-fated narcotics transaction arranged by Sanchez. Romero, an LTP gang member, told Sanchez that the group was holding him responsible for the \$40,000 it lost in the botched drug deal. Romero, Palomo and the others kidnapped Sanchez's brother for \$40,000 ransom. When Sanchez failed to make the full payment, he was kidnapped, beaten and threatened with death if he did not pay the \$20,000 balance. The gang expert testified the LTP gang relies on kidnapping as payback for the soured drug deal, and to elevate the status of its members in the community and to its rival gangs. From this evidence, it was reasonable to infer LTP or one of its affiliates was the group that lost money in the failed drug deal, and the affected gang members kidnapped Sanchez to recover the \$40,000 loss, to punish him for causing the loss and to intimidate rival gangs and residents in the area, thereby enhancing their own status. (See *People v. Albillar*, *supra*, 51 Cal.4th at p. 63.) Thus, there was substantial evidence of the "benefit of" prong of the enhancement.

### ***B. Specific Intent to Promote/Further/Assist Criminal Conduct***

To meet the second prong, there must be evidence from which it is reasonable to infer the defendant committed the underlying offense "with the specific intent to promote, further, or assist in any criminal conduct by gang members." (§ 186.22, subd. (b)(1); *People v. Albillar*, *supra*, 51 Cal.4th at p. 64.) "In common usage, 'promote' means to contribute to the progress or growth of; 'further' means to help the progress of; and 'assist' means to give aid or support. (Webster's New College Dict. (1995) pp. 885, 454, 68.)" (*People v. Ngoun*, *supra*, 88 Cal.App.4th at p. 436 [construing § 186.22, subd. (a)].) Circumstantial evidence of intent is sufficient. "There is rarely direct evidence that a crime was committed for the benefit of a gang. For this reason, 'we



routinely draw inferences about intent from the predictable results of action. We cannot look into people's minds directly to see their purposes. We can discover mental state only from how people act and what they say.' [Citation.]" (*People v. Miranda* (2011) 192 Cal.App.4th 398, 411-412.) The second prong is most often satisfied by evidence the defendant committed the crime with other known gang members. From evidence "the defendant intended to and did commit the charged felony with known members of a gang, the jury may fairly infer that the defendant had the specific intent to promote, further, or assist criminal conduct by those gang members." (*People v. Albillar, supra*, 51 Cal.4th at p. 68.) In this case, defendant acted with other known LTP gang members in committing the kidnapping and aggravated assault for the benefit of the gang. Accordingly, defendant's intent can be inferred from the circumstances of the offenses and the expert testimony. The second prong was satisfied by substantial evidence.

Defendant's reliance on *In re Frank S.* (2006) 141 Cal.App.4th 1192 and *In re Daniel C.* (2011) 195 Cal.App.4th 1350 does not help him. In *Frank S.*, the appellate court found insufficient evidence to support a gang enhancement on a finding the minor possessed a concealed dirk or dagger where there was no evidence "the minor was in gang territory, had gang members with him, or had any reason to expect to use the knife in a gang-related offense." (*In re Frank S., supra*, at p. 1199.) "In fact, the only other evidence was the minor's statement to the arresting officer that he had been jumped two days prior and needed the knife for protection." (*Ibid.*)

In *In re Daniel C.*, the appellate court determined the evidence was insufficient to support a gang enhancement on a finding the minor committed robbery, where there was no evidence that the minor and his companions acted in concert to rob the store manager of a bottle of liquor, or that they had made it known to the manager they were gang members, or that the minor's act of striking the store manager with the liquor bottle before fleeing the store was anything more than a spur-of-the-moment reaction to the manager's attempt to retrieve the liquor bottle. (*In re Daniel C., supra*, 195 Cal.App.4th at p. 1363.) In fact, the minor told police that his companions were unaware of his intent to steal the liquor bottle; they left the store before he did. (*Id.* at pp. 1354, 1361.)

The instant case is clearly distinguishable, in that the crimes were committed by multiple gang members to compensate the gang for the failed drug transaction.

### **DISPOSITION**

The judgment is affirmed.

JACKSON, J.

We concur:

PERLUSS, P. J.

WOODS, J.