

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANKIE MONARQUE,

Defendant and Appellant.

B239048

(Los Angeles County  
Super. Ct. No. KA091657)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Tia Fisher, Judge. Affirmed.

Deborah L. Hawkins, 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, Mary Sanchez and Esther P. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

---

After jury trial, appellant Frankie Monarque was convicted of the first degree murder of Omar Payan. The jury found true an allegation that the crime was committed for the benefit of a street gang (Pen. Code, § 186.22, subd. (b)(4)) and an allegation that appellant personally and intentionally used a handgun and caused great bodily injury and death. (Pen. Code, § 12022.53, subds. (b), (c) & (d).) Appellant admitted having suffered the prior convictions alleged in the information, and was sentenced to a total of 80 years to life in state prison. This appeal followed. We affirm.

### Standard of Review

The sole issue on appeal is the sufficiency of the evidence for the gang enhancement, which applies to "Any 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, . . ." (Pen. Code, § 186.22, subd. (b)(4).)

"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.] 'A reviewing court neither reweighs evidence nor reevaluates a witness's credibility.' [Citation.]" (*People v. Albillar* (2010) 51 Cal.4th 47, 59-60.)

### Facts

The relevant facts are these: On July 25, 2009, appellant shot Payan multiple times, while Payan sat in his car. Payan died of gunshot wounds.

Appellant was an influential member of the Eastside Bolen Parque gang, in Baldwin Park. Angel Quintana, who was with appellant when he shot Payan, was also a member of that gang, as was Payan. A few months earlier, Payan had been "jumped" by appellant and several other men.

Marilyn Aranda, mother of Payan's two children, testified that Payan and appellant's brother, Jake Monarque, had committed robberies together, that in 2006, "they got caught," that Jake Monarque (but not Payan) served prison time, and that in juvenile hall, Payan did not "back up his gang."

Aranda also testified that Payan sold marijuana to his friends. Appellant sought to elicit testimony that Payan had bragged that he did not pay taxes to the gang, but even after Aranda had an opportunity to refresh her recollection with the police report, she did not remember saying that to the police.

After appellant was arrested in this case, a deputy sheriff posing as an inmate was placed in his cell. Appellant told the officer that he had shot "one of his friends," "over family shit." He also said that the victim had "disrespected a lot of people," "fucked with the wrong party," and "disrespected himself," and that the shooting was over "clavo," which meant drugs. Appellant said that he had planned the crime and discussed it with his homies.

A gang expert, Detective Esteban Mendez of the Baldwin Park Police Department, testified, *inter alia*, that respect is the most important part of gang culture. Gang members earn respect by creating an atmosphere of fear and intimidation in the community and with other gang members. If a gang member is disrespected, even by another gang member, he must act on it "from assault up to murder." A gang member can disrespect the gang by providing information to law enforcement or by selling drugs in another gang member's territory without paying a tax to the gang, because profit from drug sales is important to a gang. A gang member who did not follow the rules could be assaulted or killed. Further, when two gang members commit a crime, and only one is convicted, the gang will suspect that the other gang member cooperated with the police.

Detective Mendez testified that "If you disrespect a . . . gang member's family, it's no longer personal. It stems from a personal matter but you get the gang involved by disrespecting that gang member's family, you're disrespecting that gang member. He has to act on it."

On cross-examination, Detective Mendez testified that a gang member who had been disciplined for an offense was not normally disciplined again for the same offense.

### Discussion

Appellant's contention is that there was insufficient evidence that the crime was committed "for the benefit" of his gang. He argues that the evidence in this case showed that the motivation was personal, not gang-related. He cites the evidence that he told the undercover officer that he shot Payan over "family shit," and the evidence that Payan did not serve prison time for the robberies he committed with Jake Monarque.

Appellant argues that the only evidence that this crime was for the benefit of the gang was the expert opinion, based on gang culture in general and not on the facts of this case. In reliance on *People v. Ochoa* (2009) 179 Cal.App.4th 650, *People v. Ramon* (2009) 175 Cal.App.4th 843, and *In re Frank S.* (2006) 141 Cal.App.4th 1192, appellant argues that a gang expert's testimony alone is insufficient to find an offense gang related, but that additional substantial evidence is required.

There was ample evidence here. Payan had avoided prison time for crimes committed by the brother of an influential gang member, raising a suspicion that he had cooperated with the police. This was, according to expert testimony, disrespect of the gang member and thus the gang, punishable with murder. It is true that, as appellant argues, he told the undercover officer that the shooting was over family matters, but given the expert testimony that disrespect of a gang's family member is disrespect of the gang, the testimony does not compel another result here. "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." (*People v. Albillar, supra*, 51 Cal.4th at p. 60.)

Appellant also makes arguments based on his statement to the undercover officer that the killing was over drugs. He argues that the incident several months prior to the murder was punishment by the gang for failure to pay taxes on drug sales, and cites the expert testimony that a gang member will usually be punished only once for a rule infraction. However, as respondent argues, there is no evidence that the earlier beating was over drugs. Indeed, given the expert evidence concerning a gang's control over drug sales in its area, any evidence that Payan was dealing drugs without paying the gang supports the jury's finding on the gang enhancement.

#### Disposition

The judgment is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

ARMSTRONG, J.

We concur:

TURNER, P. J.

MOSK, J.