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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. ALEXANDER VENTURA, Defendant and Appellant.	2d Crim. No. B271534 (Super. Ct. No. BA415012) (Los Angeles County)

Alexander Ventura appeals after a jury convicted him of conspiracy to commit extortion (Pen. Code,[1] § 182, subd. (a)(1); count 1) and two counts of extortion by threat (§§ 519, 520; counts 7 and 8), and found true allegations the crimes were committed for the benefit of a criminal street gang (§ 186.22 subd. (b)). Appellant admitted a prior strike and prior serious felony conviction (§§ 667, subds. (a)(1), (b)-(i), 1170.12, subds. (a)-(d)).

[1] All statutory references are to the Penal Code.

The trial court sentenced him to 38 years to life in state prison.[2] Appellant contends the evidence is insufficient to support his conviction of extortion on count 8. He also claims the prosecution's gang expert conveyed testimonial hearsay regarding case-specific facts, in violation of *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*). We affirm.

STATEMENT OF FACTS

Prosecution

In 2012, appellant was a member of the Mara Salvatrucha (MS-13) criminal street gang and belonged to the gang's "Tiny Winos" clique. Linares was the clique's shot-caller. Appellant was second-in-command and in charge of collecting "taxes" or "rent" (i.e., extortion payments) for the clique. Oscar,[3] Jonathan, Perdomo, and Segovia belonged to MS-13's "Los Bagos" (Bagos) clique. The victim, Angel Jimenez-Rivas (Jimenez), was a former MS-13 and Bagos clique member. In 2010, Jimenez left the gang and moved out of the neighborhood. Two years later, he lost his job and moved in with his parents, who lived in MS-13's territory.

Around February 2012, Segovia and "Boxer" approached Jimenez on the street and asked him where he was from. To avoid physical harm, he identified himself as a Bagos member.

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[2] Appellant's codefendants Oscar Joshua Chavez, Jonathan Chavez, Edwin Omar Castillo Perdomo, and Ronald Segovia were separately tried and convicted of conspiracy to commit extortion and seven counts of extortion by threat. The judgments against them were affirmed on appeal. (*People v. Chavez* (Nov. 2, 2017, B265608) [nonpub. opn.]) Codefedants Ivan Castro and Thomas Linares entered negotiated pleas prior to trial.

[3] For ease of reference and clarity, we refer to brothers Oscar and Jonathan Chavez by their first names.

The men told Jimenez the clique's leader wanted to talk to him. They asked Jimenez for his phone number and he complied.

One or two weeks later, Oscar called Jimenez and said he would see him soon. A week or two later, Oscar and Jonathan went to Jimenez's apartment. Oscar identified himself as the Bagos' shot-caller and told Jimenez he had to put in work for the clique or pay them money. Jimenez said he did not want to put in work. Oscar and Jonathan told him they would "check" him if he did not pay, which he understood to mean he would be beaten up or killed. Jimenez gave Oscar $40. As Oscar and Jonathan were leaving, they told Jimenez they would see him again soon.

Jimenez made several additional payments over the next few months. After being pistol-whipped by Perdomo, Jimenez sold his computer for $150 and gave the money to Perdomo. Castro eventually called Jimenez and began demanding money. Jimenez eventually decided to call the police. He later met with the police and the FBI and agreed to become a paid informant. Castro subsequently called Jimenez and told him "they were going to check [him]" if he did not pay $100 by May 3.

On May 3, Jimenez went to a store to make a payment to Castro. He was wearing a wire and had $100 the FBI had given him. Castro was not at the store when Jimenez arrived, but appellant was. Appellant flashed a gang sign at Jimenez, who understood this to mean he should give appellant the money. Jimenez spoke to appellant and gave him the $100. As Jimenez was leaving, Castro arrived and appellant walked over to his car. Castro later called Jimenez to report he had received the money.

Castro, Perdomo, and Segovia continued demanding money from Jimenez. On May 31, Jimenez went to Oscar and Jonathan's house with $100 the FBI had given him. Jimenez

gave the money to Jonathan, who was talking to Oscar on the phone. Jonathan then told Jimenez he had one week to "tag" at an intersection the Bagos, the Tiny Winos, and another gang all claimed as their territory. Jonathan made clear that Jimenez would be beaten up if he did not comply.

Appellant called Castro and Segovia that same day. Over the next two weeks, he called or received calls from Castro, Segovia, Perdomo, and Linares. On June 20, two Tiny Winos members were killed by a rival gang member. Appellant called Castro twice that day and the next day Oscar called appellant and Linares. During another phone call, Linares told Jimenez "[Oscar] told me that you were going to give me the money."

Los Angeles Police Sergeant Samuel Arnold testified as the prosecution's gang expert. MS-13's primary activities included murder, extortion, and conspiracy to commit extortion. Members of the gang will "check" (i.e., physically assault) someone who has "done something wrong or something that [the gang] didn't like." The gang's shot-callers expect other members to comply with their orders and "use force and fear and assault[] to make sure whatever rule they give out is followed up." In response to a hypothetical question based on the facts of the case, Sergeant Arnold opined that the charged offenses were intended to and did benefit MS-13's Bagos and Tiny Winos cliques.

Defense

Dr. Bill Sanders, a criminal justice professor at California State University, Los Angeles, testified as appellant's gang expert. Sanders opined it was "uncommon" for a gang to extort its own members. He was aware that MS-13 was known for extorting street vendors, but was unsure whether the evidence at

issue in this case amounted to extortion. He also believed that a person could leave his gang without suffering any repercussions.

Appellant testified in his own defense. He initially claimed that he stopped being active in MS-13 in 2015, but later said it was 2010. He denied any knowledge that Jimenez had been extorted or that the Bagos and Tiny Winos cliques extorted members who failed to put in work. He also denied ever extorting money from a fellow gang member. He claimed that members who fail to put in work are still free to socialize with other members and are free to leave the gang without being hurt. With regard to the May 3, 2012 incident, he claimed that Chavez had asked him to collect money from someone who owed it to Chavez. Appellant did not know that Chavez was referring to Jimenez and did not expect to see Jimenez at the store that day.

DISCUSSION

Sufficiency of the Evidence - Count 8

Appellant contends the evidence is insufficient to support his conviction of extortion by threat in count 8, which is premised on Jimenez's last payment of $100 on May 31, 2012. "When considering a challenge to the sufficiency of the evidence to support a conviction, 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.]" (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.) We must "presume[] in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citations.]" (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.)

Appellant contends his conviction on count 8 cannot stand because "a critical link in the chain of conviction is missing—that appellant participated in or knew that the payment [Jimenez] made to [Jonathan] was for the purposes of extortion." He also asserts that "neither appellant, nor Mr. Jimenez, were [*sic*] aware that MS-13 members extorted their own members."

These assertions disregard the standard of review, which requires us to view the evidence in the light most favorable to the judgment. (*People v. Lindberg*, *supra*, 45 Cal.4th at p. 27.) Moreover, the jury could reasonably find the extortion charged in count 8 was committed by appellant's coconspirators in furtherance of the conspiracy of which he was convicted in count 1.[4] "[E]ach member of a conspiracy is criminally responsible for the acts of fellow conspirators committed in furtherance of . . . the conspiracy" as well as the natural and probable consequences of those acts. (*People v. Zielesch* (2009) 179 Cal.App.4th 731, 739.) The jury was so instructed here pursuant to CALCRIM No. 400. Appellant's claim that the evidence is insufficient to support his conviction on count 8 thus fails.

Sanchez

Appellant contends the court prejudicially erred in allowing Sergeant Arnold, the prosecution's gang expert, to testify to case-specific testimonial hearsay. He asserts that the evidence was admitted in violation of state hearsay rules and his constitutional

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[4] Appellant, along with his codefendants, was charged with seven counts of extortion by threat. After the prosecution rested, the court granted appellant's motion for a judgment of acquittal on the extortions charged in counts 2 through 6 because there was no "sufficient independent showing that [appellant] was part of the conspiracy charged in this case prior to [the] May 3rd" extortion upon which count 7 is based.

confrontation rights, as provided in *Sanchez*, *supra*, 63 Cal.4th 665, which was decided six months after he was convicted. Although he did not object at trial, he claims an objection would have been futile. The People respond that the claim is forfeited and in any event lacks merit.

We conclude the claim is not forfeited. "Any objections would . . . have been futile because the trial court was bound to follow pre-*Sanchez* decisions holding expert 'basis' evidence does not violate the confrontation clause. [Citation.] We will therefore address the merits of this claim." (*People v. Meraz* (2016) 6 Cal.App.5th 1162, 1170, fn. 7 (*Meraz*), review granted on another ground on March 22, 2017, S239442 [opinion remains precedential under Cal. Rules of Court, rule 8.1115(e)(3)]; see also *People v. Stamps* (2016) 3 Cal.App.5th 988, 995 [recognizing that *Sanchez* announced a "paradigm shift" in the law regarding the admissibility of expert testimony].)

On the merits, however, the claim fails. In *Sanchez*, our Supreme Court held that a gang expert witness cannot "relate as true case-specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception." (*Sanchez*, *supra*, 63 Cal.4th at p. 686.) Thus, an expert "is generally not permitted . . . to supply case-specific facts about which he has no personal knowledge." (*Id.* at p. 676.) The court defined "case-specific facts" as "those relating to the particular events and participants alleged to have been involved in the case being tried." (*Ibid.*)

Sanchez also held that the trier of fact must necessarily consider the basis for expert testimony for its truth in order to evaluate the expert's opinion, which in turn implicates the Sixth amendment right of confrontation. (*Sanchez*, *supra*, 63 Cal.4th

at p. 684.) The admission of a testimonial hearsay statement by a declarant who is not available at trial violates the confrontation clause of the Sixth Amendment unless the defendant had a prior opportunity for cross- examination. (*Crawford v. Washington* (2004) 541 U.S. 36, 62, 68 (*Crawford*).) "When any expert relates to the jury case-specific out-of-court statements, and treats the content of those statements as true and accurate to support the expert's opinion, the statements are hearsay. . . . If the case is one in which a prosecution expert seeks to relate *testimonial* hearsay, there is a confrontation clause violation unless (1) there is a showing of unavailability and (2) the defendant had a prior opportunity for cross-examination, or forfeited that right by wrongdoing." (*Sanchez*, at p. 686, fn. omitted.)

Appellant contends that Sergeant Arnold violated *Sanchez* when he responded to the prosecutor's question regarding "the different kinds of sources" he relied on "when it comes to getting information about a gang like MS-13." Specifically, he faults the sergeant for testifying that his "best" sources of information were "jaded ex-girlfriend[s] or . . . jaded ex-wi[ves]," "family members who don't agree maybe with what they're doing," "[b]usiness owners, the victim themselves, . . . [n]eighbors," "individuals who have been arrested and want to try and get a reduced sentence," wiretaps, recorded jail calls, and other gang experts.

This testimony, however, was not case-specific. "Case-specific facts are those relating to the particular events and participants alleged to have been involved in the case being tried." (*Sanchez*, *supra*, 63 Cal.4th at p. 676.) Under *Sanchez*, an expert may still rely on general "background testimony about general gang behavior or descriptions of the . . . gang's conduct and its territory," which is relevant to the "gang's history and

general operations." (*Id.* at p. 698.) The expert may also "relate generally the kind and source of the 'matter' upon which his opinion rests." (*Id.* at p. 686.) As the People correctly note, "[t]hat is precisely what Sergeant Arnold did here." Because the testimony was not case-specific, it did not run afoul of *Sanchez*. (See *Meraz*, *supra*, 6 Cal.App.5th at p. 1175 [gang expert was "plainly" allowed to testify about the gang's "operations, primary activities, and pattern of criminal activities, which was unrelated to defendants or the current [crime] and mirrored the background testimony the expert gave in *Sanchez*"].)

Appellant also takes issue with Sergeant Arnold's testimony that he opined Oscar was the Bagos' shot-caller after "speaking with [Jimenez]" and "other gang members, review[ing] their reports, [and] listen[ing] to numerous phone calls, which we will later listen to." Although this testimony was case-specific, it only conveyed hearsay to the extent the sergeant stated he had heard a phone call in which Castro had identified Oscar as the shot-caller. The jury, however, heard independent evidence that Oscar was the shot-caller; indeed, appellant and Jimenez both testified to having personal knowledge of that fact.

Appellant also fails to demonstrate that any of the challenged statements conveyed *testimonial* hearsay, as contemplated in *Crawford*. Accordingly, any error in admitting the evidence would not compel reversal unless it is reasonably probable appellant would have achieved a more favorable result had the evidence been excluded. (*Sanchez*, *supra*, 63 Cal.4th at p. 698.) Appellant fails to make such a showing. There was ample independent evidence that (1) the primary activities of MS-13 and its Bagos and Tiny Winos cliques included extortion,

and (2) Oscar was the Bagos' shot-caller. Accordingly, any error in admitting the challenged evidence was harmless. (*Ibid.*)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Curtis B. Rappe, Judge
Superior Court County of Los Angeles

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