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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

RODNEY BOURGEOIS,

Defendant and Appellant.

B293131

(Los Angeles County  
Super. Ct. No. BA457040)

APPEAL from a judgment of the Superior Court of Los Angeles County, Laura F. Priver, Judge. Affirmed.

Donna L. Harris, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Senior Assistant Attorney General, Zee Rodriguez and Stephanie C. Santoro, Deputy Attorneys General, for Plaintiff and Respondent.

## I. INTRODUCTION

A jury convicted defendant and appellant Rodney Bourgeois of first degree murder (Pen. Code, § 187, subd. (a)<sup>1</sup>), shooting at an occupied motor vehicle (§ 246), and possession of a firearm by a convicted felon (§ 29800, subd. (a)(1)). The jury found true the allegations that defendant personally used and personally and intentionally discharged a firearm causing great bodily injury and death in the commission of the murder and shooting at an occupied motor vehicle offenses. (§ 12022.53, subds. (b)-(d).) It further found true the allegation that he committed each of the offenses for the benefit of, at the direction of, or in association with a criminal street gang with the specific intent to promote, further, or assist in criminal conduct by gang members. (§ 186.22, subds. (b)(1)(A) & (C).) The trial court sentenced defendant to state prison for 50 years to life.<sup>2</sup>

On appeal, defendant contends that insufficient evidence supported the jury's gang allegation findings. We affirm.

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

<sup>2</sup> The trial court imposed a four-year gang enhancement on defendant's felon in possession of a firearm sentence and otherwise struck the gang allegations for purposes of sentencing. Pursuant to section 654, the trial court stayed execution of sentence on the motor vehicle shooting offense and accompanying firearm enhancement and the firearm possession offense and accompanying gang enhancement.

## II. BACKGROUND<sup>3</sup>

On April 27, 2017, Louis McCoy and his friend Lamar “J.T.” Thompson arranged to meet at a Taco Bell restaurant near Crenshaw and Venice Boulevards at around 3:30 p.m. McCoy planned to “catch up on things” with Thompson and, apparently, to smoke marijuana with him before McCoy had to go to work. When McCoy arrived at the Taco Bell, Thompson was walking to the restaurant from a liquor store across the street. McCoy parked his car and he and Thompson stood next to McCoy’s car and talked.

After McCoy and Thompson talked for about 10 minutes, defendant, whom McCoy knew as “Gangster Rod,” drove up. Defendant got out of his truck and approached Thompson. Defendant and Thompson “had words” or an “altercation” that lasted five to seven minutes. During the altercation, Thompson said that he heard defendant had been talking about him in the neighborhood and told defendant, “[K]eep my name out your mouth. I don’t know you like that.”

Defendant said, “Blood, you not from my hood.” McCoy explained that “Blood” referred to “Blood and Crip.” “Hood” meant the neighborhood a person grew up in or “banged” in, and could be used as a gang reference.

Thompson said, “You can keep my name out your mouth or we can fight.” Defendant responded, “No, tell Taco Bell to turn the cameras off.” Defendant got into his truck and “sped off.”

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<sup>3</sup> Because defendant’s sole contention on appeal concerns the sufficiency of the evidence supporting the jury’s gang allegation findings, we focus our recitation of the facts on that issue and include additional facts as needed for context.

McCoy asked Thompson if he was all right. Thompson responded, “Ah, no. He said he’s gon’ be back.” By “he,” Thompson was referring to defendant.

After defendant left, McCoy observed that Thompson was “kind of heated,” and told him to get into McCoy’s car. McCoy and Thompson smoked for about five or 10 minutes. Thompson then asked McCoy to take him to the store and McCoy drove him to a Smart & Final. Thompson told McCoy that he would be right back, got out of the car, and walked towards the store.

Earlier that day, Thompson had called his friend Daniel Brown and asked to borrow \$10. Brown said that he would meet Thompson at a Smart & Final “off of” Crenshaw Boulevard. When Brown entered the Smart & Final parking lot, he saw Thompson. Thompson got into Brown’s car. Brown noticed that Thompson seemed agitated—mad about something. Thompson said that he had “just got into it with—and he had to punk somebody . . . .” He said that “he had to handle some business because somebody was fucking with him and he was going to slash someone.”

Brown pulled into an alley and parked so he and Thompson could talk. As Brown and Thompson were talking, defendant drove up in his truck. Brown had known defendant since the mid-1980s, or for about 30 years. At one time, they were fellow members of the Rolling 20s gang. As defendant approached, he was holding a gun out of the window.

Defendant stopped near Brown’s car and got out of the truck. He had a gun in his hand. Defendant was upset and argued with Thompson through the windshield. Thompson held up one arm and said, “I’m cool.” At the preliminary hearing,

Brown testified that Thompson also said, ““I ain’t fucking with you. Fuck you.””

After about 20 seconds, Brown heard a shot from in front of his car. He ducked and was struck by glass. Thompson jumped from the front passenger seat to the back seat and told Brown to “punch out,” or drive. Thompson did not say anything more, “[h]is life went out of him. It was over.”<sup>4</sup>

Brown jumped out of the car as a bullet had just been shot through his windshield. Defendant had not moved from the place where he argued with Thompson. “He act[ed] like he was shocked that it went off like that . . . .” Brown “came up on [defendant]. Like, what the fuck, you know?” Defendant did not respond. Brown turned his attention to Thompson and called 911. Defendant got into his truck and left.

The parties stipulated that defendant “suffered a prior conviction.”

Los Angeles Police Department Officer John Thompson testified as the prosecution’s gang expert. Officer Thompson opined that defendant had tattoos that were consistent with being a member of both the Rolling 20s and the Black P Stones gangs—Blood gangs that got along. Based on defendant’s tattoos, Officer Thompson opined that defendant was a member of the Rolling 20s and Black P Stones gangs.

According to Officer Thompson, the Rolling 20s and Black P Stones gangs both claimed the area between 27th and 30th Streets and Crenshaw Boulevard. The Taco Bell at 27th Street and Crenshaw Boulevard and the Smart & Final at 29th Street

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<sup>4</sup> According to the autopsy report, Thompson died from a gunshot wound to the chest.

and Crenshaw Boulevard were within that overlapping gang territory.

According to Officer Thompson, territory is important to gangs. The statement from a Blood gang member to a non-gang member, “You ain’t from my ‘hood, Blood,” was a form of aggressive questioning about the non-gang member’s status—why was he in that area or neighborhood—known as “pressing.” A gang member would “press” a perceived non-gang member to protect the gang member’s territory.

The prosecutor presented Officer Thompson with a set of hypothetical facts based on the facts in this case. Based on those facts, the prosecutor asked Officer Thompson whether the murder in the hypothetical was committed for the benefit of, or at the direction of, or in association with a criminal street gang with the specific intent to promote or further criminal conduct by “that” gang. Officer Thompson responded that the murder was committed “in the benefit of.”

Officer Thompson explained that gangs rely on fear and intimidation within the community. The brazenness of committing a crime during the day demonstrates the belief that the gang has instilled fear in the neighborhood such that it would prevent witnesses from cooperating with law enforcement.

The crime also benefitted the individual gang member because his “pressing” of an individual coming into the gang’s territory protected the gang’s turf. A gang member’s status within the gang rises when he shows his allegiance to the gang by protecting its turf. As an individual gang member’s status rises, the gang’s status also rises because the individual is a member of the gang and the gang has committed more crimes. In

this case, where two gangs claimed the same territory the conduct would benefit both gangs.

### III. DISCUSSION

Defendant contends that insufficient evidence supported the findings that the Black P Stones were a criminal street gang or that defendant committed the offenses for the benefit of, at the direction of, or in association with a criminal street gang or with the specific intent to promote, further, or assist in any criminal conduct by gang members within the meaning of section 186.22, subdivision (b).<sup>5</sup> We agree that the prosecution did not present sufficient evidence that the Black P Stones were a criminal street gang, but hold that sufficient evidence nevertheless supported the gang allegation findings.

#### A. *Standard of Review*

“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

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<sup>5</sup> Section 186.22, subdivision (b) provides:

“(b)(1) Except as provided in paragraphs (4) and (5), 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, 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 as follows: . . . .”

reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citation.] We determine ‘whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ [Citation.] In so doing, a reviewing court ‘presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.’” (*People v. Edwards* (2013) 57 Cal.4th 658, 715.) “A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support” the jury’s verdict.” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) The same standard applies to a claim that insufficient evidence supported a jury’s gang allegation finding. (*People v. Villalobos* (2006) 145 Cal.App.4th 310, 321–322.)

## B. *Analysis*

### 1. Black P Stones

Defendant contends the prosecution failed to present sufficient evidence that the Black P Stones were a criminal street gang because it did not present evidence that one of the primary activities of the Black P Stones was the commission of one or more of the felonies enumerated in section 186.22, subdivision (e). (§ 186.22, subd. (f).) The Attorney General concedes the deficiency, but argues the gang enhancements need not be stricken because defendant does not contend that the prosecution failed to present sufficient evidence that the Rolling



20s—the other gang of which defendant was a member—were a criminal street gang.

We agree that the prosecution did not present sufficient evidence that the Black P Stones were a criminal street gang. However, because defendant has not demonstrated or even claimed that insufficient evidence supported the jury’s implicit finding that the Rolling 20s were a criminal street gang within the meaning of section 186.22, subdivision (f), we do not strike the gang enhancements due to the insufficiency of evidence as to the Black P Stones.

## 2. The “Benefit” Prong of the Gang Enhancement

Defendant contends that Officer Thompson’s testimony that the shooting benefited the Rolling 20s<sup>6</sup> gang was insufficient to support the benefit prong of the gang allegation. He argues that the officer’s opinion that the gang’s status would have been enhanced by the shooting was unsupported because there was no evidence defendant was an active member of the Rolling 20s gang and no evidence connecting the shooting to that gang.

As for defendant’s active gang status, defendant acknowledges that he has gang tattoos but argues they likely date back to the 1980s when he and Brown were Rolling 20s gang members. Defendant argues that he was not an active gang member at the time of the shooting as Officer Thompson had not

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<sup>6</sup> Defendant’s contention also concerns the Black P Stones gang. However, because we held above that the prosecution failed to introduce sufficient evidence that the Black P Stones were a criminal street gang, we omit references to the Black P Stones in this discussion.

had prior contact with him and was unable to provide information about him.

Active gang membership, however, is not an element of the gang enhancement under section 186.22, subdivision (b)(1). (*In re Ramon T.* (1997) 57 Cal.App.4th 201, 206–207.) Nevertheless, there was evidence of defendant’s active gang membership. McCoy testified that he knew defendant at the time of the shooting only as “Gangster Rod” which suggested active rather than former gang membership.

Defendant acknowledges that active gang membership is not an element of the gang enhancement, but argues that Officer Thompson’s opinion that the shooting benefited the Rolling 20s gang was based on the rising status of the gang due to the criminal activity of an active gang member. In addition to his “status” testimony, however, Officer Thompson explained that crimes committed brazenly during the day are a demonstration of the community fear and intimidation on which gangs rely. That opinion was not based on a perpetrator’s active gang membership and would have included criminal activity by non-gang members for the benefit of a gang. “Expert opinion that particular criminal conduct benefited a gang’ . . . can be sufficient to support the . . . section 186.22, subdivision (b)(1), gang enhancement.” (*People v. Vang* (2011) 52 Cal.4th 1038, 1048.)

Defendant alternatively argues that “even if [he] was an active gang member at the time of the offenses, none of the eye witnesses identified [him] as a gang member or indicated there was anything about his appearance to lead them to believe [he] was a gang member or that the crime was gang-related.” We disagree. Brown identified defendant as a member of the Rolling 20s gang. McCoy testified that defendant said to Thompson,

“Blood, you not from my hood” and explained that “Blood” referred to “Blood and Crip” and “hood” could be used as a gang reference.

As for evidence connecting the shooting to the Rolling 20s gang, defendant relies on *People v. Ochoa* (2009) 179 Cal.App.4th 650, *People v. Ramirez* (2016) 244 Cal.App.4th 800, and *People v. Perez* (2017) 18 Cal.App.5th 598 for the proposition that a gang member may commit a crime for a purpose other than to benefit their gang and argues “there was nothing about this offense that advertised the fact that it was being either committed by a gang member or for a gang purpose.” We disagree. The evidence showed that defendant said to Thompson, “Blood, you not from my hood.” McCoy testified that “Blood” referred to “Blood and Crip” and “hood” could be used as a gang reference. Officer Thompson testified that a Blood gang member’s statement to a non-gang member, “You ain’t from my ‘hood, Blood,” is a form of aggressive questioning or “pressing” that gang members use to protect their territory.

### 3. The Specific Intent Prong of the Gang Enhancement

Defendant acknowledges that although Officer Thompson did not specifically address the specific intent prong of the gang allegation, the officer’s testimony that defendant was showing allegiance to the Rolling 20s gang and protecting its territory by “pressing” Thompson was circumstantial evidence of defendant’s intent to promote or further criminal conduct by the gang. He nevertheless argues that insufficient evidence supported the specific intent prong because there also was substantial evidence that established “an ongoing relationship between [Thompson]

and [defendant] and the conflict between the two men was personal.”

We agree with defendant that Officer Thompson’s testimony was circumstantial evidence of defendant’s intent to advance criminal conduct by the Rolling 20s gang. We also agree that the jury could have interpreted the dispute between defendant and Thompson as a personal dispute and not gang-related. In determining whether sufficient evidence supported the specific intent prong of the gang allegation, however, it is not our role to reweigh or reinterpret the evidence. (*People v. Baker* (2005) 126 Cal.App.4th 463, 469 [“If the circumstances reasonably justify the [trial court’s] findings,’ the judgment may not be overturned when the circumstances might also reasonably support a contrary finding. [Citation.] We do not reweigh or reinterpret the evidence; rather, we determine whether there is sufficient evidence to support the inference drawn by the trier of fact”].) Because sufficient evidence supported the jury’s implicit finding that defendant intended to advance criminal conduct by the Rolling 20s gang, we reject defendant’s argument.

#### **IV. DISPOSITION**

The judgment is affirmed.

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KIM, J.

We concur:

RUBIN, P. J.

MOOR, J.