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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re J.T., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B268566
(Super. Ct. No. 1461132)
(Santa Barbara County)

THE PEOPLE,

Plaintiff and Respondent,

v.

J.T.,

Defendant and Appellant.

J.T., a minor, appeals from an order adjudicating him a ward of the court (Welf. & Inst. Code, § 602) after the juvenile court found true the allegation that J.T. committed an assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4))¹ and found true the enhancement allegation

¹ Further unspecified statutory references are to the Penal Code.

that the offense was committed for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22, subd. (b)(1)). The court ordered J.T. to serve 90 days in juvenile hall, and ordered him to serve, upon his release, at least six months of probation at his aunt's residence.

After the notice of appeal was filed, our Supreme Court decided *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*), a case regarding use of hearsay statements in gang expert testimony. J.T. contends the gang enhancement should be reversed because the expert relied on inadmissible evidence to support his opinion that J.T. was an active Northwest gang member and that he committed the assault for the benefit of the gang. We affirm.

BACKGROUND

J.T. was involved in a fight in the boys' bathroom at his school. When security officer Glenn Broome entered the bathroom, he saw four or five boys trying to pull J.T. out of the bathroom and urging him to leave. Two of the boys, A.E. and M.M., were known Northwest gang members. J.T. had blood on his hands and scratches on his face, and another student, A.V., was bleeding from his head.

A security video showed A.V. entering the bathroom followed by J.T., A.E., and M.M. Another boy, M.E., who also hung out with Northwest gang members, stood outside the bathroom as a lookout.

Detective Michael Parker testified as a gang expert at the contested jurisdictional hearing. The parties stipulated that Northwest gang was a criminal street gang. Parker explained that one way Northwest gang members establish respect is through starting fights in school.

Parker opined that J.T. was a gang member based, in part, on police reports from January 2015 and May 2015 prepared by a nontestifying officer. The May 2015 report documented a vandalism incident on the school campus, and both reports noted that J.T. was associating with Northwest gang members. Parker also noted a statement made by J.T.'s mother to another nontestifying officer about J.T.'s gang association.

Parker also based his opinion on two Facebook photos of J.T. making Northwest gang signs and a screenshot of a "status update" from J.T.'s Facebook page referencing Northwest gang members. Additionally, Parker personally contacted J.T. during a July 2015 incident involving a fight at a park. Parker responded to the scene and observed J.T. with a known gang member. Parker detained J.T. and the other gang member on that occasion.

Parker opined that J.T. committed the assault for the benefit of the Northwest gang based on the evidence that he was a gang member and a hypothetical reflecting the facts of this case.

DISCUSSION

An expert may rely on hearsay as a basis for his knowledge on the subject matter of his expertise. (*Sanchez, supra*, 63 Cal.4th at p. 676.) But an expert 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." (*Id.* at p. 686.) 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." (*Id.* at p. 676.)

J.T. contends that the gang expert relied on and conveyed case-specific hearsay (i.e., the January 2015 and May 2015 police reports and the statement by J.T.'s mother to a nontestifying officer) to support his opinion. However, any error was harmless beyond a reasonable doubt because there was independent evidence establishing that J.T. was a Northwest gang member and that he acted for the benefit of his gang. Parker had personal contact with J.T. and a known gang member involving another similar incident. Parker also personally observed two Facebook photos, in which J.T. displayed gang signs, and a status update referencing other Northwest gang members. J.T. was also associating with other known gang members when he committed the instant crime. Given the ample evidence establishing J.T.'s gang membership and his presence at fights along with other known gang members, there was no prejudicial error in admitting Parker's testimony.

DISPOSITION

The order is affirmed.

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TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

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