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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. MARQUICE DAJUAN GARRETT, Defendant and Appellant.	B267231 (Los Angeles County Super. Ct. No. GA092181)

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

Thomas Kevin Macomber, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr. and Daniel C. Chang, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Marquice Garrett appeals from the judgment entered following his conviction for home invasion robbery. The jury also found that he committed the offenses for the benefit of, at the direction of, or in association with a criminal street gang. The prosecution's theory supporting the gang enhancement depended upon proof that defendant and his accomplice, Eddie Brodney McFadden (McFadden), were both members of the Pasadena Denver Lane Bloods gang (PDLB).[1] Defendant contends the gang enhancement findings must be reversed because McFadden's gang membership was shown through case-specific hearsay testimony by expert witnesses, found inadmissible in *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*). We conclude that the bulk of the challenged testimony was properly admitted and, further, any error under *Sanchez* was harmless. We therefore affirm.

FACTUAL AND PROCEDURAL HISTORY

I. *Procedural Background*

The Los Angeles County District Attorney (the People) filed an information on May 29, 2014 charging defendant with three counts of home invasion robbery (Pen. Code, § 211).[2] As to all three counts, the information also alleged that the offenses were committed for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22, subd. (b)(1)(C)) and that defendant personally used a handgun (§ 12022.53, subd. (b)).

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[1] McFadden, who was separately tried, is not a party to this appeal.

[2] Unless otherwise indicated, all further statutory references are to the Penal Code.

Defendant pled not guilty and denied the special allegations. The first trial ended with a deadlocked jury; the trial court then declared a mistrial. Upon retrial, the jury found defendant guilty as charged and found true the firearm and gang allegations. The court sentenced defendant to a total term of 31 years to life in state prison. Defendant timely appealed.

II. *Prosecution Evidence*

A. *The home invasion robbery*

The incident occurred at the Pasadena home of 89-year-old Hazel W., where she lived with her daughter, Ernestine W., and Ernestine's husband, John Z.[3] All three victims testified at trial.[4] On March 12, 2013, around 10:30 p.m., Ernestine and John were watching television in the den. Hazel was in her bedroom. Ernestine testified that she saw a man, later identified as defendant, appear in the doorway of the den (suspect #1). He was wearing a black hoodie sweatshirt, black sweat pants, black sneakers, and was holding a black handgun, which he pointed at them. Suspect #1 said "don't move or I'll shoot." He then started asking "where's the daughter? Are you the daughter?" Ernestine was startled that he would know anyone in their household. He ordered John to lie down on the floor and ordered Ernestine to go

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[3] Pursuant to California Rules of Court, rule 8.90 (b)(4), we refer to the victims in this case by their first names to protect their personal privacy interests. No disrespect is intended.

[4] Prior to trial, the court conducted a competency hearing with Hazel, who was then 92 years old and wheelchair-bound. Her testimony was often confused and she had very limited recall of relevant events. Noting that Hazel appeared to be "extremely fragile" and often was confused, the court allowed her to testify but also indicated the prosecutor could use her prior testimony as needed.

down the hallway to her mother's bedroom. The couple complied. According to John, suspect #1 remained in the den with him throughout the robbery. He kept asking for money, telling John not to move, and touching a metal object that felt like a gun to the back of John's head.

Suspect #1 had his hoodie pulled up over his face but at times it would slip down and allow Ernestine to see the lower part of his face. She testified that he would repeat the same phrases: "'where da money, man? Where's at? I know you got it. Shut up. Where's at? I know you got it. Don't lie.'" When she reached her mother's room, Ernestine saw Hazel sitting on the bed "hysterical." There were two more men in Hazel's room. The second suspect was similarly dressed to the first but wearing dress shoes and a mask over his face (suspect #2). The third suspect, whom Ernestine referred to as the "ringleader," later was identified as McFadden. He wore a black mask and a black hoodie, with a white t-shirt visible underneath (suspect #3). Ernestine testified that she referred to suspect #3 as the ringleader because he "seemed the most seasoned of the three because he spoke very calmly," and he "stood his ground and told [the other two men] what to do and they did it."

Suspect #3 was the tallest of the three men. He also pointed a gun at the victims and demanded money. All three men were African-American and wore gloves.

At one point during the incident, Ernestine was seated on the bed next to her mother. Suspect #3 approached, rested the top of his gun on Ernestine's forehead and said to Hazel, "I'll kill your daughter and I will let you watch." He told Ernestine that the other men had been watching her family, and that they knew John took a cab to work. John testified that he has partially

impaired vision and takes a cab to work a few times per week. Suspect #3 also told Ernestine that "he had killed 10 people and he wasn't afraid to do it again."

The suspects searched through the bedroom closets and drawers, asking about money. Ernestine told them she did not know where it was. She previously had observed her mother with large amounts of cash in the house, but did not know how much. The men filled a briefcase with her mother's jewelry and she also saw one holding a white envelope full of $100 bills.

The three suspects remained in the house for over three hours. Finally, in an effort to convince the men to leave, Ernestine agreed to give them an additional $10,000, promising to withdraw the money from the bank the following morning. After she agreed to go to the bank, the ringleader told Ernestine he would call her at 11:00 a.m. the next morning. At his request, she gave him her cell phone number. He pulled out a white cell phone and input her number. The men left in the early morning hours of March 13, 2013. Ernestine testified that she did not call the police because she was in shock and worried that the men might return. The suspects took John's cell phone; they also disconnected the landline to the house and told the victims not to contact anyone or to reconnect the phone.

Later that morning, Ernestine went to the bank and began the process of withdrawing the money from her account. She also passed a note to the teller stating that she was withdrawing the money under duress and planned to notify the police as soon as the transaction was complete. The teller contacted the police and officers from the Pasadena Police Department arrived while Ernestine was still at the bank. The ringleader called Ernestine on her phone prior to and during her time at the bank. She took

several of the calls on speaker phone in the presence of police officers at the bank and followed officers' instructions to delay the money delivery.

B. *Investigation and arrests*

On March 14, 2013, officers executed a search warrant at an apartment in Arcadia and detained McFadden. They seized a white iPhone from his apartment, as well as jewelry and cash. Hazel identified a bracelet seized from the apartment as similar to one she owned. The cash, found in the pocket of a pair of sweat pants, totaled 21 $100 bills and 14 $20 bills. Officers also recovered a loaded revolver at McFadden's apartment, as well as store receipts showing almost $600 in cash purchases at several different stores within 24 hours following the robbery.

Officers detained defendant on March 14, 2013. On his person, police recovered eight $100 bills and receipts from Game Stop and Big Lots stores showing purchases within 24 hours following the robbery. The receipts showed cash purchases of several hundred dollars each. Surveillance video from both stores showed defendant, McFadden, and two other individuals together in the stores.[5]

Detective David Duran and his partner interviewed defendant following his detention on March 14, 2013. Defendant gave inconsistent explanations for the source of the $800 found on him when he was detained, including that he got the money from his brother, he received government relief, and he sold a gold chain at a cash-for-gold shop. The owner of the shop mentioned by defendant denied that defendant ever sold any

[5] There is no evidence in the record that the third suspect ever was identified or charged.

items to that store. Defendant also contended he did not own a phone and denied any knowledge of McFadden.

A few days after the robbery, Ernestine picked a photo of McFadden out of an array as suspect #3, the ringleader, saying that she recognized his eyes. She also identified McFadden at his trial in 2013. Both Hazel and Ernestine identified a photograph of defendant as possibly suspect #1. Ernestine testified that defendant fit the size and build of suspect #1 or #2 and was reasonably certain in her identification of defendant. Officers also conducted an audio lineup using voice recordings of three individuals, including defendant. Ernestine and John both identified defendant's voice as that of one of the intruders. They both became visibly upset upon hearing defendant's voice in the recording.

Investigating officers extracted data from McFadden's white iPhone, as well as from an Android phone linked to defendant and seized from his home. They also retrieved the call detail reports for those phones, as well as Ernestine's cell phone. Although McFadden had blocked his number from appearing on Ernestine's caller identification when he called her during the robbery, his number was included in the call detail records from the cell phone company. These records showed that McFadden called Ernestine's phone five times between 12:23 a.m. and 12:25 a.m. on March 13, and then multiple times later that morning, as Ernestine went to retrieve the money from the bank.

McFadden's and defendant's phones showed over 100 calls and texts between the two, including in the afternoon before the robbery and around 10:00 a.m. on March 13, 2013, a few hours after the robbery. In addition, photos extracted from McFadden's and defendant's cell phones showed the two men together, as well

as with other identified PDLB gang members. Defendant's cell phone contained a photograph of a pile of approximately 31 $100 bills, with a gold chain on top of the pile. The time stamp for this photo indicated it was taken on March 13, 2013 at approximately 3:10 p.m. Defendant's phone also contained an internet search on March 4, 2013 for a police scanner and another with the search terms "professional house robber."

C. *Gang testimony*

Detective David Duran, the lead investigating officer for the robbery, testified to his familiarity and experience with PDLB.[6] He discussed the gang-related hand signs frequently made by PDLB members and identified several individuals making those hand signs in a photograph with McFadden. Duran also testified that McFadden previously was detained in an apartment along with other individuals Duran knew to be PDLB members.

Duran testified regarding photos recovered from defendant's phone showing him making PDLB hand signs, as well as signs for the Project Gangsters, a subset group within PDLB. Duran identified other connections between defendant and PDLB, including photographs on defendant's Facebook page showing PDLB hand signs, defendant wearing clothing often used by PDLB members to signify membership, and defendant together with known PDLB members; he also discussed Facebook messages sent by defendant using common PDLB terminology. Defendant also had tattoos on his abdomen and forehead that Duran testified were PDLB symbols.

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[6] Duran was not designated as a gang expert at trial. His testimony is not challenged on appeal.

Officer Jordan Ling testified as a gang expert for the prosecution, based on his work in the gang unit of the Pasadena Police Department. He discussed the creation of field identification (FI) cards, which officers use to gather information on potential suspects, including data such as an individual's "name, address, gang affiliations, what they are wearing, tattoos, if they are driving a car." If a person is "more feared by other gang members because they are more violent, they have more respect from their peers"; thus, committing a violent crime can promote an individual's reputation in the gang community. According to Ling, it is common for gang members to share proceeds of a robbery among themselves. It is not common for gang members to bring someone along to commit a crime who is not a member of the gang, because that person would be less trustworthy.

Ling testified regarding his familiarity and experience with PDLB and its members. Personally, he had over 200 contacts with PDLB members and had investigated numerous crimes involving PDLB members, including robberies. PDLB originated in about 1980; by 2013, the gang had over 300 members. He also was familiar with the Project Gangsters "clique," which had about 50 members as of 2013. Ling also discussed common PDLB tattoos and hand signs.

Ling testified about encountering families with multiple members in PDLB, including the McFadden family. PDLB used the moniker "Denver" to denote the "highest rank that one can attain" within the gang. Based on his training, experience, and "review of departmental resources," Ling was aware of a PDLB member named Denver Ed, who is "at the top of the hierarchy" of PDLB. Denver Ed is McFadden's father. Based on his review of

departmental resources, he had heard McFadden referred to as "Baby Ed."

According to Ling, the primary activities of PDLB and Project Gangsters members were the same: "murder, attempted murder, armed robbery, burglary, assault with deadly weapons, narcotics sales." Ling testified about two predicate crimes committed by PDLB members, a robbery and an attempted robbery, both committed in 2012. Ling was the gang investigator for both crimes.

Ling detailed the case-related materials he had reviewed regarding the instant case, including police reports, photographs taken from the cell phones, and the Facebook records. His only contact in the field with McFadden occurred during his arrest for this robbery. Ling also reviewed departmental resources concerning McFadden, including a field identification card prepared by another officer. Ling opined, based on his review of the evidence and records in the case, that McFadden was a PDLB member.

The prosecutor presented Ling with several photographs depicting McFadden with other individuals. Ling testified that he recognized some of the other individuals in the photographs, including through personal contact. Based on his personal contact with those individuals and his review of departmental resources, Ling identified several of the individuals in the photographs by name and opined that they were PDLB members. He discussed the PDLB hand signs flashed by several of the individuals in the photographs. Ling also identified Davell Ogletree, who exchanged several Facebook messages with defendant, as an admitted PDLB gang member based on Ling's personal contact with him. Ling also reviewed photos of two

other individuals, Michael Garrett (defendant's brother) and Paul Scott, who were seen in the store surveillance footage with defendant following the robbery. Ling identified PDLB tattoos on the two men from the photos. Based on the tattoos and review of other departmental resources, Ling opined that both men were PDLB members, and that Michael Garrett also was a member of the Project Gangsters clique.

Ling testified that defendant's tattoos were consistent with membership in PDLB and Project Gangsters. Based on the tattoos and other evidence in the case, including the photos and Facebook posts, and his review of FI cards, Ling opined that defendant was a member of PDLB. Given a lengthy hypothetical matching the facts of the case, assuming the involvement of two or three PDLB members, with one gang member acting as the ringleader, Ling opined that the robbery was committed for the benefit of, at the direction of, or in association with a criminal street gang. He explained that the "gang benefits from this because, one . . . the individual benefits from this because [it] raises the status of the person being a violent person," and also, gang members often share proceeds of such crimes. On cross-examination, he opined that if two or three gang members spent the proceeds of a robbery on themselves, the crime would still benefit the gang if the suspects were gang members.

III. *Defense Evidence*

Defendant presented an expert psychologist who testified regarding memory and witness identification issues. Defendant's mother also testified that she was the source of the $800 found on defendant—she claimed she gave the money to defendant to pay her rent. Defendant's mother also admitted during cross-examination that defendant and McFadden were "acquaintances"

who socialized together, and that she knew of McFadden's father, "Denver Ed," who was well-known in Pasadena and was not "someone to be trifled with." Defendant did not testify.

DISCUSSION

Defendant raises a single contention on appeal—that the prosecution had to prove both defendant and McFadden were gang members in order to establish the gang enhancement, and the evidence of McFadden's gang membership was based on inadmissible expert testimony. As such, defendant argues the gang enhancement findings must be reversed. We disagree.

I. *Necessity of Evidence of McFadden's Gang Status*

As an initial matter, the parties dispute whether evidence McFadden was a gang member was necessary to support the gang enhancement. Defendant does not challenge Ling's opinion that defendant was a member of PDLB and Project Gangsters.[7] Instead, defendant cursorily states that if "McFadden was not a gang member, the gang enhancement would not be proved," citing case law upholding the enhancement for crimes committed by two or more gang members. (See *People v. Martinez* (2008) 158 Cal.App.4th 1324, 1332 (*Martinez*).) The Attorney General argues that a true finding on a gang enhancement under section 186.22, subdivision (b)(1) may be found based on evidence that the crime was committed by a single gang member.

Section 186.22, subdivision (b)(1) provides for a sentence enhancement as 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." The

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[7] There was no evidence establishing the identity or any gang affiliation of the third suspect.

Attorney General is correct that, as a general principle, the enhancement may apply to a felony committed by a single gang member. In such a case, however, because the prosecution cannot point to the fact that the defendant committed the crime in association with fellow gang members, there must be some other evidence to prove that the crime was gang-related and committed with the necessary specific intent pursuant to section 186.22, subdivision (b)(1). (See *People v. Rodriguez* (2012) 55 Cal.4th 1125, 1138 ["'Not every crime committed by gang members is related to a gang.' [Citation.]"]; *Martinez*, *supra*, 158 Cal.App.4th at pp. 1332-1333.)[8]

Here, the prosecution presented no evidence that the robbery was gang-related other than the fact that it was committed by at least two gang members, McFadden and defendant. Indeed, the prosecution's only hypothetical questions to Ling, the gang expert, were premised on the robbery involving two or more gang members who then shared the proceeds among themselves. In closing, the prosecutor similarly argued that the gang enhancement was met because there was evidence of "[d]ocumented gang members sharing the loot from a home invasion robbery committed by gang members in association with one another. Benefitting the gang because they are all members of the gang." Under these circumstances, we agree with defendant that absent evidence linking *both* McFadden and defendant to PDLB, there was insufficient evidence to support the jury's true findings on the section 186.22, subdivision (b)(1)

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[8] Defendant has not raised the issue of whether, assuming the prosecution established McFadden and defendant as PDLB members, the evidence was sufficient to support the gang enhancement; we therefore will not reach it.

enhancements for each count. (See, e.g., *People v. Morales* (2003) 112 Cal.App.4th 1176, 1179 ["The evidence that defendant knowingly committed the charged crimes in association with two fellow gang members was sufficient to support the jury's findings on the gang enhancements . . . ."]; *Martinez, supra,* 158 Cal.App.4th at p. 1332 [evidence robbery committed by two gang members sufficient to support enhancement].) Because defendant does not challenge the evidence of his own gang membership, we turn to evidence of the link between McFadden and PDLB in light of the recent ruling in *Sanchez*.

II. *Sanchez*

In *Sanchez, supra,* 63 Cal.4th at p. 671, the defendant was charged with, among other things, active participation in a criminal street gang (§ 186.22, subd. (a)) and commission of a felony for the benefit of the gang (§ 186.22, subd. (b)(1)). To prove defendant was a member of a gang, the prosecution's gang expert testified about general gang culture and also about the defendant's contacts with police and statements to police. (*Sanchez, supra,* 63 Cal.4th at pp. 671-673.) Because the expert had never met the defendant, his testimony was based on police reports, field identification cards, and similar resources detailing specific statements the defendant made to other officers and gang-related conduct by the defendant. (*Ibid*.) Based on this information, the expert opined that defendant was a gang member and that a hypothetical crime mirroring the facts of the case would benefit the gang. (*Id*. at p. 673.)

The defendant argued that "the expert's description of defendant's past contacts with police was offered for its truth and constituted testimonial hearsay" admitted in violation of *Crawford v. Washington* (2004) 541 U.S. 36 (*Crawford*). (*Sanchez,*

supra, 63 Cal.4th at p 674.) The Supreme Court began its analysis by addressing "whether facts an expert relates as the basis for his opinion are properly considered to be admitted for their truth." (*Ibid*.) It concluded that the long-standing "paradigm" that testimony as to the basis for an expert's opinion is not hearsay "is no longer tenable because an expert's testimony regarding the basis for an opinion *must* be considered for its truth by the jury." (*Id*. at p. 679, italics in original.) Instead, the Court adopted the rule that "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." (*Id*. at p. 686.)

In fashioning this rule, the Court drew a distinction between "an expert's testimony regarding his general knowledge in his field of expertise," and "case-specific facts about which the expert has no independent knowledge." (*Sanchez, supra*, 63 Cal.4th at p. 676, italics omitted.) The Court recognized that the former category, even if "technically hearsay," had "traditionally" been admissible as "a matter of practicality. . . . An expert's testimony as to information generally accepted in the expert's area, or supported by his own experience, may usually be admitted to provide specialized context the jury will need to resolve an issue." (*Id*. at pp. 675-676.) By contrast, "[c]ase-specific facts are those relating to the particular events and participants alleged to have been involved in the case being tried. Generally, parties try to establish the facts on which their theory of the case depends by calling witnesses with personal knowledge of those case-specific facts. An expert may then testify about more generalized information to help jurors understand the significance of those case-specific facts. An expert is also allowed

to give an opinion about what those facts may mean. The expert is generally not permitted, however, to supply case-specific facts about which he has no personal knowledge." (*Id*. at p. 676.) The Court listed several examples to illustrate the distinction between general knowledge and case-specific facts, including the following: "That an associate of the defendant had a diamond tattooed on his arm would be a case-specific fact that could be established by a witness who saw the tattoo, or by an authenticated photograph. That the diamond is a symbol adopted by a given street gang would be background information about which a gang expert could testify. The expert could also be allowed to give an opinion that the presence of a diamond tattoo shows the person belongs to the gang." (*Sanchez, supra*, 63 Cal.4th at p. 677.)

In addition, the Court emphasized that an expert "may still *rely* on hearsay in forming an opinion, and may tell the jury *in general terms* that he did so." (*Sanchez, supra*, at p. 685, italics in original.) "There is a distinction to be made between allowing an expert to describe the type or source of the matter relied upon as opposed to presenting, as fact, case-specific hearsay that does not otherwise fall under a statutory exception." (*Id*. at p. 686.) Noting the Attorney General's complaint that the ruling would hamper expert opinions about gangs, the Court concluded that "[g]ang experts, like all others, can rely on background information accepted in their field of expertise under the traditional latitude given by the Evidence Code. They can rely on information within their personal knowledge, and they can give an opinion based on a hypothetical including case-specific facts that are properly proven. They may also rely on nontestimonial hearsay properly admitted under a statutory hearsay exception.

What they cannot do is present, as facts, the content of testimonial hearsay statements." (*Id.* at p. 685.)

Turning to the evidence at issue, the Court reversed the jury findings on the gang enhancements, holding that "the case-specific statements related by the prosecution expert concerning defendant's gang membership constituted inadmissible hearsay under California law. They were recited by the expert, who presented them as true statements of fact, without the requisite independent proof. Some of those hearsay statements were also testimonial and therefore should have been excluded under *Crawford*." (*Sanchez, supra*, 63 Cal.4th at pp. 670–671.) Further, because the main evidence of the defendant's intent to benefit the gang was the inadmissible expert testimony, the confrontation clause violation was not harmless beyond a reasonable doubt. (*Id.* at p. 699.)

III. *Analysis*

Defendant identifies two portions of the prosecution expert's testimony that he claims included case-specific hearsay in violation of *Sanchez, supra,* 63 Cal.4th 665.[9] He further

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[9] We reject the Attorney General's assertion that defendant forfeited this issue by failing to object on hearsay or confrontation clause grounds in the trial court. Defendant's trial concluded prior to the issuance of the *Sanchez* opinion. As such, any objection would likely have been futile because the trial court was bound to follow pre-*Sanchez* decisions allowing experts to testify as to case-specific materials upon which they relied in forming their opinions, subject only to the restrictions of Evidence Code sections 352, 801, and 802. (See, e.g., *Sanchez, supra*, 63 Cal.4th at pp. 678-679 [discussing prior approach]; *People v. Hill* (2011) 191 Cal.App.4th 1104, 1128–1131.) We will therefore address the merits of this claim.

contends that at least some of this evidence was testimonial in violation of his Sixth Amendment right to confront and cross-examine witnesses under *Crawford, supra*, 541 U.S. 36, and that the improperly admitted evidence was key to the jury's true finding on the gang enhancement. We conclude that the majority of the evidence defendant challenges did not implicate *Sanchez*. Further, to the extent some of it did, the error was harmless.

First, defendant challenges Ling's testimony regarding the history of the McFadden family in the PDLB. He contends Ling had no personal knowledge of this information, but based his testimony on his review of "departmental resources," including an FI card. We conclude most of Ling's testimony in this area regarding the background and hierarchy of PDLB was the proper subject of his general expertise, rather than case-specific facts barred by *Sanchez*, *supra*, 63 Cal.4th at p. 676. Specifically, defendant points to Ling's testimony regarding the history of certain families, including the McFadden family, within PDLB and the use of the "Denver" moniker to denote an original or high-ranking PDLB member. From the record, it appears this testimony was based on Ling's own personal knowledge and experience with PDLB. Additionally, to the extent Ling's testimony was based in part on departmental resources, it falls within the scope of his general expertise regarding that gang and its history.

Defendant also objects to Ling's identification of other PDLB members, which the prosecution used to establish McFadden's association with the gang. But Ling testified that he knew several of the individuals as gang members based on his personal contacts with those individuals. In addition, he relied on his knowledge of gang hand signs made by those individuals,

and gang-related clothing and tattoos—all depicted in properly admitted photographs or based on personal contacts—to support his opinions regarding gang membership. Just as in the diamond tattoo example provided in *Sanchez, supra*, 63 Cal.4th at p. 677, Ling could properly offer an expert opinion that these individuals were gang members based on independently admissible evidence. Further, to the extent Ling relied on "departmental resources" in part to determine gang membership, he did not discuss any specific facts contained within such resources at trial. Pursuant to *Sanchez, supra*, 63 Cal.4th at p. 685, Ling was permitted to rely on hearsay in forming an opinion regarding gang membership, and could "tell the jury in general terms" that he did so by describing "the type or source of the matter relied upon." The testimony at issue here fell within this scope and was thus admissible.

Defendant also points to Ling's testimony that Denver Ed was a top member of PDLB, was McFadden's father, and McFadden used the gang moniker "Baby Ed" as case-specific hearsay. Ling did not specify the basis for his knowledge regarding Denver Ed's position in PDLB or his connection to McFadden. However, he did acknowledge that he had not made personal contact with McFadden prior to this case and that he had heard McFadden referred to as "Baby Ed" based on his review of departmental resources. Because some, if not all, of this testimony presented case-specific hearsay as fact, it was error to admit these facts through Ling at trial.

However, to the extent it was error to admit some of the expert testimony at issue here, there was substantial independent evidence of McFadden's gang membership. As such, any error was harmless beyond a reasonable doubt. (See

Sanchez, supra, 63 Cal.4th at p. 698 [improper admission of non-testimonial hearsay subject to "reasonably probable" harmless error standard, while confrontation clause violation requires stricter federal standard]; *Chapman v. California* (1967) 386 U.S. 18, 24.)[10]

The admissible evidence supporting Ling's conclusion that McFadden was a PDLB member was significant. The prosecution presented evidence linking McFadden to multiple PDLB members, including defendant, and both Duran and Ling discussed this evidence in detail. While defendant challenges the bases for Ling's opinion as to the gang membership of a few of these individuals, most of his opinions that certain individuals were PDLB gang members were based on his personal experience and many, including defendant and several others, have not been challenged on appeal. Defendant acknowledges that the "close contact between [defendant] and McFadden in the form of cell phone calls and texts between them, and photos from each of their cell phones depicting them with each other, and a photo from [defendant]'s Facebook page of them together" was part of the "gang evidence" in this case. However, he argues that Ling did not base his opinion on this evidence. We disagree. Ling specifically testified that he had reviewed the records from the case, including cell phone photographs and Facebook records, and that his opinion regarding McFadden's gang membership was based on his review of that evidence. Those records were admitted through other, percipient witnesses (not challenged

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[10] Because we conclude that any error was harmless under either standard, we need not reach defendant's claim that some of the hearsay at issue "may have been" testimonial and therefore a violation of the confrontation clause.

here); thus Ling's discussion of that evidence at trial does not implicate *Sanchez*. (*Sanchez, supra*, 64 Cal.4th at p. 686.)

In addition, Ling testified regarding the gang hierarchy and typical manner in which PDLB members committed gang-related crimes. This evidence, together with the evidence that McFadden acted as the ringleader during the robbery and that McFadden and defendant spent some of the proceeds together immediately following the crime, further supports the conclusion that McFadden was a PDLB member. Thus, defendant's suggestion that Ling principally relied on McFadden's family history to determine his gang membership is not supported by the record. Further, as discussed above, any error in admitting hearsay about Denver Ed and his relationship to McFadden was harmless beyond a reasonable doubt.

DISPOSITION

The judgment of the trial court is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.