

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 SIX

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

2d Juv. No. B276468
(Super. Ct. No. TJ22499)
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

T.M.,

Defendant and Appellant.

T.M., a minor, appeals from an order adjudicating him a ward of the court (Welf. & Inst. Code, § 602). The juvenile court found true the allegations that T.M. possessed a firearm (Pen. Code, § 29610; count 1),¹ carried an unregistered loaded firearm (§ 25850, subd. (a); count 2), and possessed live

¹ Further unspecified statutory references are to the Penal Code unless otherwise stated.

ammunition (§ 29650; count 3). It also found true an allegation 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)(A)). The court ordered T.M. to serve six months of probation at his home.

T.M. contends there is insufficient evidence to support the gang enhancement. We affirm, but we correct the adjudication/disposition minute order to reflect the court's oral pronouncement finding true all three (not two) counts of the petition.

Prosecution Evidence

Officer Carlos Gonzalez and his partner were patrolling the Imperial Courts Housing Projects (the Projects) when they observed a dispute between several men. The officers were near a parking lot where gang members of the Project Watts Crips (PJWC) loiter, smoke, and sell narcotics and where multiple shootings have occurred.

When Gonzalez turned the corner into the parking lot, he saw a group of six to eight men standing in a circle engaged in "some form of altercation." The men dispersed when the officers arrived. Gonzalez saw one man in the group crouch down and throw something under a car. The police later found a gun under the car.

Gonzalez noticed T.M., who was wearing a blue sweater, quickly walking away and clutching something in his front pocket. Gonzalez ordered T.M. to stop, but T.M. continued to walk away. Gonzalez ran towards T.M., and when he drew near, T.M. removed a gun from his sweater and threw it. The gun landed on the roof of an adjacent building. Gonzalez arrested T.M.

Gonzalez's partner retrieved the gun from the roof. It was not registered to T.M. It had seven bullets in the magazine and one live round in the chamber. T.M. told the officers he had the gun for protection.

Officer Robert Martinez, who was at the Projects on the night of the incident, testified as a gang expert regarding the PJWC. He said that PJWC gang members commit crimes such as possessing weapons, assault, burglary, murder, and shootings. They use the nickname, "PJ Crips," or some variation. They often wear blue clothing. They commonly use hand signs depicting the letters "P," "J," "W," or "C."

Martinez opined that T.M. was a PJWC gang member. He said that an individual can become a gang member as a "legacy" if he was raised in the gang lifestyle and a family member was a gang member. He believed that T.M. was a legacy based on his father's gang history.

T.M.'s Facebook profile contained photos, status updates, and comments depicting a gang lifestyle. Martinez stated that a nongang member could not put such content on Facebook without being subject to discipline. Some of T.M.'s Facebook comments and photos referenced T.M.'s gang moniker, "Money." There were photos depicting T.M., alone or with other individuals, making gang signs by forming the letters "PJ", "W," or "C" with their hands. Other photos showed T.M. with other men wearing gang-related clothing, and in one photo, T.M. was next to a known PJWC gang member. Several photos included captions that made gang references (e.g., "Straight out of PJ's"). T.M. captioned one photo "On Crips it's Friday." Martinez explained that the phrase was similar to "I swear to God," and use of such a phrase by a nongang member would not "be taken

lightly.” Another photo showed T.M. with a gun tucked into his waistband with the caption “My people said Money, you a hot nigga. You be on the block with the bloc[c].” The spelling of “blocc” with double c’s is significant because gang members do not use the letters “C” and “K” together. He noted other captions with gang-related spelling.

Based on a hypothetical reflecting the facts of this case, Martinez opined that an individual gang member under similar circumstances as T.M. carries a gun for the benefit of and in association with the PJWC gang. He explained that fighting between cliques within the same gang establishes hierarchy. He said that an individual promotes his status by showing the gang his willingness to be a shooter and by showing his rivals that he is “armed and ready to put in work.” Martinez opined that the armed individual’s role in the fight is to back up the gang and to be a designated shooter if necessary.

Defense Evidence

A defense gang expert opined that there is not enough evidence that T.M. was a gang member. He stated that that not every person carrying a gun in the Projects is a gang member and that T.M.’s Facebook photos and posts are insufficient to show he was a PJWC member. Based on a hypothetical, he opined that there is insufficient evidence to establish that T.M.’s gun possession was for the benefit of the gang. He explained that it is possible for someone in T.M.’s situation to carry a gun solely for protection.

DISCUSSION

Gang Enhancement

A section 186.22, subdivision (b)(1) gang enhancement allegation requires proof that: (1) the defendant

committed a felony “for the benefit of, at the direction of, or in association with any criminal street gang;” and (2) the defendant did so with the specific intent to promote, further, or assist in any criminal conduct by gang members. (§ 186.22, subd. (b)(1); *People v. Miranda* (2011) 192 Cal.App.4th 398, 411.) We review a challenge of the juvenile court’s true finding on a gang benefit allegation for substantial evidence. (*People v. Garcia* (2016) 244 Cal.App.4th 1349, 1366.) In doing so, we view the record in the light most favorable to the judgment to determine whether it contains substantial evidence from which a reasonable trier of fact could find the enhancement true beyond a reasonable doubt. (*People v. Albillar* (2010) 51 Cal.4th 47, 59-60.)

In determining whether a defendant possessed the requisite intent under section 186.22, subdivision (b)(1), the trier of fact will often infer intent from the facts and circumstances surrounding the offense. (*People v. Rios* (2013) 222 Cal.App.4th 542, 567-568.) Rarely is there direct evidence of a defendant’s specific intent to commit a crime for the benefit of a gang. (*People v. Margarejo* (2008) 162 Cal.App.4th 102, 110.)

“[A] trier of fact may rely on expert testimony [on] gang culture and habits to reach a finding on a gang allegation.” (*In re Frank S.* (2006) 141 Cal.App.4th 1192, 1196 (*Frank S.*); see also *People v. Gardeley* (1996) 14 Cal.4th 605, 617 (*Gardeley*), disapproved on other grounds in *People v. Sanchez* (2016) 63 Cal.4th 665.) An expert’s opinion can be sufficient to support a section 186.22, subdivision (b)(1) gang allegation. (*People v. Vang* (2011) 52 Cal.4th 1038, 1048.)

T.M. contends the evidence is insufficient to satisfy the second prong of the gang allegation—that he had the specific

intent to promote, further, or assist in criminal conduct by gang members. We reject this contention.

Substantial evidence supports a reasonable inference that T.M. had the specific intent to promote, further, or assist the PJWC's criminal conduct based on T.M.'s gang membership, the circumstances surrounding the crime, and the expert's opinion. Several Facebook photographs, status updates, and captions show T.M. displaying gang signs, wearing gang attire, sitting next to documented gang members, referring to his gang moniker, or making other gang references. Martinez opined that T.M. was a PJWC gang member based on this evidence, his familiarity with the PJWC, and his belief that T.M. was a legacy member.

During the incident, T.M. was in PJWC territory where there had been recent shootings. He was wearing a blue sweater, which represented his gang's color. He was amongst a group of men engaged in some sort of altercation. At least one other person in the group had a gun and threw it under a car when the police arrived. T.M. also admitted to the officers that he had a gun.

Martinez explained how T.M.'s possession of a gun served the gang's purpose. He explained that cliques within the same gang will often fight each other to establish hierarchy. He opined that gun possession by a gang member under similar circumstances to T.M. serves the gang by being back up during a fight. And he opined the gun possession promotes the gang member's status by showing his willingness to be a shooter and to commit a crime for the gang.

This case is unlike *Frank S.*, in which the gang benefit enhancement was reversed for insufficient evidence.

(*Frank S.*, *supra*, 141 Cal.App.4th at p. 1199.) There, Frank S., who was affiliated with a gang, was carrying a knife while riding his bike through a neighborhood outside his gang's territory. (*Id.* at p. 1195.) The only evidence that Frank S. had a knife for gang-related conduct was his statement to the officers that he was jumped by a rival gang two days earlier and needed the knife for protection. (*Id.* at p. 1199.) In reversing the true finding, the appellate court concluded the expert's testimony "simply informed the judge of her belief of the minor's intent." (*Ibid.*) "[T]he prosecution presented no evidence other than the expert's opinion regarding gangs in general and the expert's improper opinion on the ultimate issue to establish that possession of the weapon was 'committed for the benefit of, at the direction of, or in association with any criminal street gang' [Citation.]" (*Ibid.*)

In contrast, substantial evidence supports the juvenile court's finding that T.M. possessed the gun with the specific intent to promote, further, or assist in criminal conduct of his gang.

Minute Order

At the adjudication/disposition hearing, the juvenile court sustained the petition on all three counts, but the minute order reflects that the petition was sustained only as to counts 1 and 2.

Where there is a discrepancy between the oral pronouncement and the minute order on the court's disposition, the oral pronouncement controls. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185-186 (*Mitchell*); *People v. Hartley* (2016) 248 Cal.App.4th 620, 637.) We have the authority to correct such discrepancies. (*Mitchell*, at p. 185.) We will correct the minute

order to reflect that the juvenile court sustained the petition on all three counts.

DISPOSITION

The clerk of the court is directed to amend the July 8, 2016 adjudication/disposition minute order to reflect that the juvenile court sustained the petition on counts 1-3 and found true the gang enhancement. As modified, the order is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Gibson W. Lee, Judge

Superior Court County of Los Angeles

Bruce G. Finebaum, under appointment by the Court
of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Senior
Assistant Attorney General, Margaret E. Maxwell, Supervising
Deputy Attorney General, Peggy Z. Huang, Deputy Attorney
General, for Plaintiff and Respondent.