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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Z.E., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B284438
(Super. Ct. No. FJ54106)
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

Z.E.,

Defendant and Appellant.

The juvenile court sustained a petition brought under Welfare and Institutions Code section 602. The petition alleged Z.E. committed second degree robbery (Pen. Code, § 211),¹ assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(4)), and assault with a firearm (§ 245, subd. (a)(2)). The

¹ All further statutory references are to the Penal Code unless otherwise stated.

petition also alleged a gang enhancement (§ 186.22, subd. (b)(1)) and that a principal personally used a firearm (§ 12022.53, subds. (b) & (e)(1)). The court found all allegations to be true.

The juvenile court determined the maximum period of confinement to be five years for the robbery and 10 years for the firearm enhancement for a total of 15 years. The court stayed punishment on the remaining allegations pursuant to section 654. We affirm.

FACTS

On March 17, 2017, at approximately 4:00 p.m., Kevin Pouche was walking on Vernon Avenue in Los Angeles. Keyshawn Meade and Z.E. approached Pouche from behind and pushed him into an alley. Meade demanded Pouche's money. Pouche asked, "What are you doing to me?" Pouche swung his fist. Meade came around to face Pouche and hit Pouche in the head with a handgun. Pouche fell to the ground. Meade took \$1,050 from Pouche's pockets. Meade and Z.E. ran away down the alley. Meade is nine years older than Z.E.

Gang Evidence

Los Angeles City Police Officer Robert Smith testified as a gang expert. Smith was assigned to monitor the Rollin' 40's street gang. The Rollin' 40's primary activities include robberies, armed robberies, gun possession and murder. Gang members were convicted of murder in 2012 and 2014. Pouche was robbed within the territory claimed by the gang.

Both Z.E. and Meade are members of the Rollin' 40's gang. Smith knows Z.E. Smith has often seen him in the company of other Rollin' 40's gang members. Z.E. has gang tattoos, including one on his neck. He has been photographed multiple times making gang signs with his hands. Smith also knows Meade. He

has seen Meade in the company of other Rollin' 40's gang members. Meade has admitted gang membership to Smith.

Given a hypothetical question based on the facts of the case, Smith opined that the robbery and assault were performed in association with and for the benefit of the Rollin' 40's gang. He also opined the crimes were committed with the specific intent to promote or assist in criminal conduct by gang members.

On the element of "association with," Smith noted that the two gang members acted in concert when they committed the crimes. The Rollin' 40's members commit crimes with only people they trust. Having two gang members together enabled one to be a lookout for the police.

On the element of "for the benefit of," Smith testified that the proceeds of the robbery are used to provide items like jewelry and tattoos that serve as a recruiting tool for prospective members. The gang further benefits because crimes such as robbery and assault enhance the gang's reputation. When a younger gang member helps an older gang member commit a crime, the younger gang member learns how to commit a crime and get away with it.

On the element of "specific intent," Smith testified that two gang members who acted in concert showed they intended to aid each other's criminal conduct. Gang members who commit crimes together build trust that enables them to commit more crimes.

Smith testified that his opinion was not changed because neither gang member shouted Rollin' 40's or identified themselves as gang members. The crimes were committed in broad daylight in Rollin' 40's territory. People in the neighborhood would be expected to recognize gang members. Nor

was Smith’s opinion affected by the victim not being a gang member. A gang seeks crimes of opportunity in its territory.

DISCUSSION

Z.E. contends the gang enhancement is not supported by substantial evidence.

In reviewing the sufficiency of the evidence, we view the evidence in a light most favorable to the judgment. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) We discard evidence that does not support the judgment as having been rejected by the trier of fact for lack of sufficient verity. (*People v. Ryan* (1999) 76 Cal.App.4th 1304, 1316.) We have no power on appeal to reweigh the evidence or judge the credibility of witnesses. (*People v. Stewart* (2000) 77 Cal.App.4th 785, 790.) We must affirm if we determine that any rational trier of fact could find the elements of the crime beyond a reasonable doubt. (*Johnson*, at p. 578.)

Section 186.22, subdivision (b)(1) provides in part: “[A]ny 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, [be subject to a sentence enhancement].”

Z.E. challenges the elements of “for the benefit of . . . or in association with” and the required specific intent.

Our Supreme Court’s analysis in *People v. Albillar* (2010) 51 Cal.4th 47 is instructive. In *Albillar*, the defendants, two brothers and their cousin were members of the Southside Chiques, a criminal street gang. The three lived in an apartment outside of their gang’s territory. Fifteen-year-old Amanda M. was an acquaintance of the men. Amanda was in the defendants’ apartment when one of the men said he wanted to speak to her in

the bedroom. In the bedroom the man started kissing her and removed her pants. The other two defendants entered the bedroom and asked if they could join in. Amanda said no and told them to get out. All three defendants raped her in concert. The defendants were convicted of rape in concert, and a gang enhancement pursuant to section 186.22, subdivision (b)(1) was found true.

On appeal, the defendants challenged the sufficiency of the evidence to support the gang enhancement. Our Supreme Court determined the evidence was sufficient.

In discussing the “association with” element of the enhancement, our Supreme Court stated, “The record supported a finding that defendants relied on their common gang membership and the apparatus of the gang in committing the sex offenses against Amanda M.” (*People v. Albillar, supra*, 51 Cal.4th at p. 60.) The court pointed to expert testimony that gang members choose to commit crimes together because it increases the success in committing the crime; it bolsters each of the member’s confidence in committing the crime; and it serves as training for younger gang members to participate in crimes with more senior gang members. The expert said that gang members can trust each other’s loyalties.

The evidence here is even stronger than in *Albillar*. In *Albillar*, the gang expert testified that in general Latino street gangs “frown[] upon” rape, the crime of which the defendants were convicted. (*People v. Albillar, supra*, 51 Cal.4th at p. 64.) Here Smith testified that the crime of which the defendants were convicted, armed robbery, is one of the Rollin’ 40’s primary activities. In *Albillar*, the defendants were blood relatives and roommates. Here the only relationship between Z.E. and Meade

disclosed by the evidence is gang membership. In *Albillar*, the defendants committed the crime outside of their gang's territory in the privacy of their apartment. Here the defendants committed the crime in their gang's territory in an alley in broad daylight. Finally, experts in both cases testified that younger gang members commit crimes with senior gang members as a type of training. In *Albillar*, all the defendants were in their 20's. Here Meade is nine years older than Z.E.

There is ample evidence that the robbery was committed in association with a criminal street gang. Because section 186.22, subdivision (b)(1) states "for the benefit of" and "in association with" in the disjunctive, we need not discuss the element of benefit.

The next element is "the specific intent to promote, further, or assist in *any* criminal conduct by gang members." "Criminal conduct" includes the current offense. (*People v. Albillar, supra*, 51 Cal.4th at p. 65.) The criminal conduct need not promote, further or assist the gang as a whole, only "gang members." (*Id.* at p. 67.)

Here the victim, Pouche, testified that two men pushed him into an alley where the robbery took place. Thus, Z.E. and Meade were acting in concert. In addition, Smith testified that gang members who commit crimes together build trust that enables them to commit more crimes. There is sufficient evidence to support the finding that Z.E. acted with the specific intent to promote, further or assist in criminal conduct by gang members.

Z.E. argues that if we reverse the true finding on the gang enhancement, we must also reverse the true finding on the firearm enhancement pursuant to section 12022.53, subdivisions (b) and (e)(1). Ordinarily section 12022.53 requires personal use

of a firearm, but if the crime is committed in association with a criminal street gang, only use by a principal is required. (See *People v. Brookfield* (2009) 47 Cal.4th 583, 590.) Because here we affirm the gang enhancement, the firearm enhancement is also affirmed.

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

J. Christopher Smith, Judge

Superior Court County of Los Angeles

Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant

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