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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ABRAHAM CERVANTES,

Defendant and Appellant.

B262325

(Los Angeles County
Super. Ct. No. BA428666)

THE COURT:*

Abraham Cervantes appeals from the judgment entered following a jury trial that resulted in his conviction of one count of vandalism with damages not over \$400 (Pen. Code, § 594, subd. (a))¹ and a true finding on the criminal street gang allegation (§ 186.22, subd. (b)(1(A))), which caused the offense to become a serious felony (§ 1192.7, subd. (c)(28)).

We appointed counsel to represent him on this appeal. After examination of the record, counsel filed an “Opening Brief” in which no issues were raised.

* BOREN, P.J., ASHMANN-GERST, J., HOFFSTADT, J.

¹ All further section references are to the Penal Code.

On September 17, 2015, we advised appellant that he had 30 days within which to submit personally any contentions or issues which he wished us to consider. Appellant has not filed a response.

At trial, the evidence established on August 24, 2014, about 11:00 p.m., Los Angeles County Sheriff's deputies were investigating a complaint about freshly painted graffiti when they observed a blue Honda Accord with two males inside abruptly stop on the south side of Blanchard Street near Gage Avenue and one male exit. The car then drove off and shortly pulled into a driveway. The driver, appellant, exited. After a deputy noted he had spray paint on his fingertips and nails, appellant admitted, "all right, you got me." The deputies recovered a black spray paint can under the car's front passenger seat, another copper spray paint can in a duffle bag behind the driver's seat, two bandanas, and a glove. Also recovered was a lanyard, to which appellant's keys were attached, displaying the letter "G" for Green Bay Packers, which was symbolic of Gage Maravilla. Appellant identified himself as member of that gang and related his moniker was "Youngster."

Steven Rascon, the male who had exited the car, was detained as he walked south on Rowan Avenue near Blanchard. He had black paint residue on his right hand. A tattoo on one arm spelled "Maravilla."

The wet, all-black graffiti observed by deputies included tags associated with the Gage Maravilla gang: "GMV," "GMVR," "Gage," the moniker "Kid" and the moniker "Wee." The gang expert explained such vandalism was one way a gang claimed its territory and opined the tagging in this case was consistent with activity by Gage Maravilla members.² He opined Rascon and appellant were Gage Maravilla gang members and that they were connected directly to the graffiti, because the word "Wee" referred to Rascon's "Wee Wee" moniker and "Kid" referred to "Youngster."

² Evidence was presented that four self-identified Gage Maravilla members had been convicted of crimes in different cases, i.e., felon in possession of a firearm, felony vandalism, possession of a concealed weapon, and attempted murder.

The evidence established \$682.14 was the total cost for graffiti removal, assuming 14 sites were affected. This amount consisted of \$278.88 for graffiti removal from the first site, and \$31.02 for each of 13 other sites.

Defendant presented evidence he no longer was involved in gangs and the paint on his hands was from his use of canned spray paint while working at his cousin's construction business. Also, the deputies did not take photographs or video of his hands or the hands of the deputies who had touched the wet graffiti in order to check if the paint on the hands was wet.

The jury convicted appellant of vandalism with \$400 or less in damage and found true the criminal gang allegation.³

Afterward, the trial court sentenced appellant to two years in state prison but ordered execution of that sentence suspended. The court placed him on formal probation for five years under these terms and conditions: He was to serve 236 days in county jail with credit for 236 days in county jail; he was to pay a \$40 court operations assessment, a \$30 criminal conviction assessment, a restitution fine of \$300, a \$300 probation revocation fine, which was stayed, and pay probation costs as ordered by the Probation Department. Further, appellant was subject to search and seizure conditions and the requirements that he register with law enforcement as a street gang participant; he was not to associate with known gang members; he was to stay away from places where gang members congregate; he was not to possess gang paraphernalia or any dangerous or deadly weapons; and he was to pay victim restitution. At the restitution hearing, the court ordered appellant and Rascon, jointly and severally, to pay victim restitution in the amount of \$682.14.

Appellant has raised no arguable issues. We have examined the entire record and are satisfied appellant's attorney has complied fully with his responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

³ Prior to trial, Rascon pled no contest to the vandalism charge and admitted the criminal gang enhancement. He is not a party on this appeal.

The judgment is affirmed.

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