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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

XIA LIN,

Defendant and Appellant.

B268602

(Los Angeles County  
Super. Ct. No. GA091066)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Jared D. Moses, Judge. Affirmed.

Robert Franklin Howell, 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, Scott A.  
Taryle, and Nicholas J. Webster, Deputy Attorneys General, for Plaintiff and  
Respondent.

A jury convicted defendant Xia Lin of murder (Pen. Code, § 187)<sup>1</sup> and found that he committed the murder for the benefit of, at the direction of, or in association with a criminal street gang with the specific intent to promote, further, and assist in criminal conduct by gang members. (§ 186.22, subd. (b).) The jury also found true certain gun use allegations. (§ 12022.53, subds. (b), (c), (d) & (e).) The court sentenced him to 50 years to life in prison.

Defendant contends that the evidence is insufficient to support the gang enhancement findings. We disagree and affirm the judgment.

## FACTUAL SUMMARY

### A. *The Murder of Qui Jin Fang*

On the night of September 22, 2013, defendant arranged to have his friend, Beier Kuang, drive him to a residential area in Alhambra. Defendant told Kuang he was going to have a “short visit” with a friend who gets off work at 10:00 p.m. Kuang parked his car near the apartment building where Qui Jin Fang lived. The two waited in the car for at least 30 minutes. At around 10:00 p.m., defendant told Kuang to wait for him, then walked away from the car. About 15 minutes later, Kuang tried and failed to reach defendant on his cell phone. (Defendant had left his cell phone in Kuang’s car.) Kuang then drove away to meet his girlfriend.

Fang was a Chinese immigrant and part-owner of a Chinese restaurant in Long Beach, where he worked in the evenings. On September 22, 2013, he returned home from the restaurant at around 10:30 p.m. and parked in the garage beneath his apartment. Before Fang got out of his car, defendant killed him by shooting him with a semi-automatic .22 caliber handgun twice in the chest, three times in the head, and once in a forearm.<sup>2</sup> A bullet also hit the garage ceiling above his car.

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<sup>1</sup> All subsequent statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> The evidence that defendant shot Fang is circumstantial; no one saw the murder. Defendant does not, however, challenge the murder conviction on appeal and, in accordance with our standard of review, our factual summary includes reasonable inferences drawn from the evidence viewed in the light most favorable to the judgment.

Two of Fang's neighbors heard the gunshots and saw a man wearing a dark hooded sweatshirt with his hands in the sweater pockets leaving the area on foot at "a brisk walking pace." The hooded man initially walked quickly toward the spot where Kuang's car had been parked, then turned and ran in the opposite direction. One of these neighbors heard someone say, "help me" during the shooting. A third neighbor testified that at around 10:30 p.m. he had heard someone yelling or talking loudly in an Asian language for about 30 seconds. He turned up the volume on his television to drown out the yelling, and did not hear any gunshots.

Police arrived about 20 minutes later and found Fang's body in the driver's seat of his car. The driver-side door was open about four to six inches. Fang's left hand held a garage door opener, and a bag—which contained \$7,742 in cash and restaurant receipts—was on his left knee near the open car door. An additional \$2,000 in cash was protruding from his shirt pocket.

At 10:45 p.m., a video surveillance camera recorded defendant walking near a movie theater located about one-half mile away from Fang's apartment. Fifteen minutes later defendant arrived at a convenience store 0.7 miles away from the theater. There, defendant bought food, loitered outside the store, and used a payphone to call the cell phone he had left in Kuang's car. Kuang answered the call and drove with his girlfriend to the convenience store to pick up defendant.

While defendant awaited Kuang's arrival at the convenience store, three persons leaving the movie theater found in the theater's parking lot a fanny pack containing a .22 caliber handgun, a silencer, one ammunition magazine full of bullets, and a nearly empty ammunition magazine. They gave the fanny pack and its contents to theater employees, who turned it over to the police.

After Kuang picked up defendant from the convenience store, defendant directed Kuang to drive to the movie theater. There, defendant began searching the parking lot where the fanny pack had been found. He picked up a dark hooded sweater and handed it to Kuang, who put it in the car, then continued to search the lot. Defendant and Kuang eventually returned to the car.

Soon after Kuang left the parking lot, police officers pulled him over and arrested the three occupants. A black ski mask and a dark hooded sweater were in the backseat area of the car, where defendant had been sitting.

Gunshot residue was found on defendant's hands and pants, and defendant's DNA matched DNA on the trigger of the gun found in the theater parking lot. A firearms expert determined that that gun fired the bullets that killed Fang.

During a search of defendant's home, police officers found a gun cleaning kit, numerous .22 caliber bullets of the same brand that killed Fang, firearms parts, a shooting target with holes the size a .22 caliber bullet would make, a firearm threading tool (which could modify a gun barrel to allow it to connect to a silencer), and \$2,000 cash. Computers in defendant's home revealed Internet searches for firearms, firearm parts, firearm shows, and "silencer for 22." Police did not find a firearm. Aside from the weapons, there was nothing in the home indicating gang activity.

#### B. *Gang Evidence*

Los Angeles County Sheriff's Detective Tom Yu testified as the prosecution's gang expert. According to him, United Bamboo is a Taiwan-based gang with approximately 50 members in the Los Angeles area. Defendant does not dispute that he was a member of United Bamboo when he killed Fang.

Detective Yu has investigated United Bamboo since 2008. Its members engage in extortion, murder, and fraud, "among other crimes." Regarding extortion, Detective Yu explained that United Bamboo members commit the crime primarily against members of the "Asian community," and target Chinese business owners and Chinese immigrants in particular. If an extortion victim refuses to pay the gang's extortion demand, the gang's reputation and its extortion schemes against others are jeopardized. When that happens, Detective Yu explained, the money is no longer an issue, and a victim's post-refusal offers to pay will be "too late." "[B]ottom line," he stated, "if a person doesn't pay extortion fees, he or she is going to be killed." By killing the victim, the gang produces a "chilling [e]ffect on other victims" and "sends a message of intimidation."

The prosecutor posed the following hypothetical to Detective Yu. “Let’s assume a Chinese business owner, he arrives home from work per his usual routine late at night; and he’s killed by [a] member of United Bamboo or a similar Asian gang using a handgun equipped with a silencer; a large sum of money is found in plain view next to this Chinese business owner undisturbed. . . . Do you have an opinion as to whether or not this crime was committed for the benefit of or at the direction of . . . United Bamboo?”

Detective Yu responded: “My opinion is that the hypothetical that you just gave me benefits the United Bamboo criminal street gang.” He explained that the killing “intimidates and puts out a message, a chilling effect, on everyone else that if you don’t pay us, we’re going to come and kill you.” In addition, the fact that the killing took place at the victim’s home sends a message “that the gang can come in to your castle where you live, where you raise your family, where you have the sanctuary of safety, that the gang can intrude upon that and come in and take that away from you on a moment’s notice.”

Detective Yu further stated that the fact that the killer did not take money from the victim was significant: “[W]hen the money’s not taken, that shows me that the gang doesn’t care about the money anymore. . . . Now it’s about the reputation and the respect that the gang must earn back.”

Neither Kuang nor his girlfriend are members of, or associated with, United Bamboo. Searches of their homes did not reveal any firearms or evidence of gang membership or criminal activity.

## DISCUSSION

Defendant contends that the evidence was insufficient to support the jury's finding on the gang enhancement for two reasons: (1) the evidence was insufficient to establish that he committed Fang's murder for the benefit of, at the direction of, or in association with a criminal street gang; and (2) the evidence was insufficient to establish that United Bamboo's "primary activities" include the commission of criminal acts specified in section 186.22. We reject each contention.

### I. *Sufficiency Of The Evidence That The Murder Was Gang Related*

When a gang enhancement finding is challenged for insufficient evidence we examine the record in the light most favorable to the jury's finding to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could make that finding beyond a reasonable doubt. (*People v. Leon* (2008) 161 Cal.App.4th 149, 156-157, 161.)

In order to prove the gang enhancement, the prosecution was required to establish that defendant committed Fang's murder "for the benefit of, at the direction of, or in association with any criminal street gang." (§ 186.22, subd. (b).) The requirement makes "it 'clear that a criminal offense is subject to increased punishment under [section 186.22] only if the crime is "gang related." ' " (*People v. Albillar* (2010) 51 Cal.4th 47, 60; accord *People v. Weddington* (2016) 246 Cal.App.4th 468, 484.) To establish this element, the prosecution may, as it did here, introduce a gang expert's testimony regarding background information regarding the pertinent gang and additional information based on the expert's personal knowledge, and elicit an opinion from the expert based on a hypothetical question that tracks the evidence in the case. (See *People v. Sanchez* (2016) 63 Cal.4th 665, 684-685; *People v. Vang* (2011) 52 Cal.4th 1038, 1046; *People v. Albillar, supra*, 51 Cal.4th 47 at p. 63.)

Here, Detective Yu opined, in essence, that if a Chinese business owner arrived home “per his usual routine late at night” and is killed by a United Bamboo member with a handgun equipped with a silencer, and the killer leaves behind a large sum of money, the murder was committed for the benefit of the United Bamboo gang. The murder benefits United Bamboo, Detective Yu explained, because United Bamboo engages in extortion against Chinese business owners and the killing “intimidates and puts out a message” to its extortion victims that they too will be killed if they fail to comply with the gang’s demands.

Detective Yu’s opinion assumes that Fang had failed to comply with an extortion demand from United Bamboo. There is no direct evidence of this fact. It can, however, be reasonably inferred from other evidence. Defendant was a United Bamboo gang member; United Bamboo engages in extortion against Chinese immigrant business owners, and Fang fit that description; Defendant killed Fang in Fang’s apartment building—a tactic United Bamboo employs to show that it can strike its victims in their “castle”; and defendant left behind nearly \$10,000 found on Fang’s body, which had been in plain view and accessible to the shooter. The failure to take such a large amount of money is a fact to consider in determining gang involvement. Although the failure to take the money may lead to different conclusions about extortion, one reasonable conclusion was explained by Detective Yu. Once United Bamboo makes a decision to kill a recalcitrant extortion subject, the gang is no longer interested in the subject’s money; the purpose of the killing is to send a message to others in the Chinese immigrant community that a refusal to comply with its extortion demands will result in death. The jury could reasonably accept this explanation and conclude that Fang was killed because he did not submit to United Bamboo extortion demands, and that the killing benefitted the gang by intimidating other extortion victims.

Defendant argues that his failure to take Fang’s money “may have resulted from [his] fear of discovery or apprehension after [Fang] refused to exit the car,” and is “consistent with a failed robbery attempt.” Defendant also points to evidence that one neighbor heard a man yelling in an Asian language around the time of the killing, a bullet had been fired into the roof of the garage, and that he fired six shots to kill Fang. These facts, he argues,





“Q. What would you say is the primary activity of this particular gang?

“A. Well, there’s certainly more than one.

“Q. Give me the highlights.

“A. If I were to go by the seriousness of offense, I would put murder up front, attempted murder, assault with deadly weapons, and then extortions and then the paper crimes like fraud, theft, you know, commercial burglaries.”

Defendant contends that Detective Yu’s testimony is insufficient evidence of the gang’s primary activities because he testified only as to the “highlights” of the gang’s activities in terms of “seriousness,” not as to the gang’s “primary activities.” We reject this argument.

*People v. Margarejo* (2008) 162 Cal.App.4th 102 is instructive. In that case, the prosecutor asked the gang expert, “ ‘[W]hat are the *primary activities* of the Highland Park criminal street gang?[]’ ” And the expert responded, “ ‘Their *activities* range from simple vandalism and battery, and can extend all the way to murder. They also include consolidated weapons, carjackings, robberies and a lot of narcotic related offenses.’ ” (*Id.* at p. 107.) The defendant argued that the expert’s testimony was insufficient to support the “primary activities” element because the expert “left out the word ‘primary’ in front of the word ‘activities.’ ” (*Ibid.*) The Court of Appeal disagreed, stating that although the attorney’s question is not evidence, “the question’s wording typically is relevant to a reasonable interpretation of the witness’s answer. Often it is vital to consider the question to understand *anything* about the answer, as with answers like ‘yes.’ ” (*Ibid.*) The jury, the *Margarejo* court explained, “had ample reason to infer that [the expert’s] answer implicitly incorporated the word ‘primary’ from the question. Ordinary human communication often is flowing and contextual. Jurors know this. Repetitive and stilted responses make up one kind of direct examination, but not the only kind. [The defendant’s] objection here calls for an unreasonably restrictive interpretation of [the expert’s] answer, which we respectfully decline.” (*Ibid.*)

Here, defendant's argument similarly calls for an unreasonably restrictive interpretation of the colloquy between the prosecutor and Detective Yu. Defendant asserts that Detective Yu did not testify that murder, for example, "was a 'primary activity' of the gang—only that it was a 'highlight' in terms of seriousness." When Detective Yu's answers are read in the context of the prosecutor's questions, however, the jury likely understood that Detective Yu was identifying the primary activities of United Bamboo, which included several crimes enumerated in section 186.22, subdivision (e). Although Detective Yu arguably qualified the list of primary activities by introducing it with the statement, "If I were to go by the seriousness of offense," this appears to be merely his way of ranking the primary activities in order of seriousness. The prosecutor's question calling for the "highlights" of the primary activities was apparently understood by Detective Yu as a request to identify the most serious activities. It does not, however, affect his opinion that the crimes he identified are primary activities of United Bamboo. We therefore reject defendant's argument that Detective Yu's opinion was insufficient to establish that United Bamboo's primary activities include crimes enumerated in section 186.22, subdivision (e).

**DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

LUI, J.