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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

THE PEOPLE, Plaintiff and Respondent, v. ENRIQUE GONZALEZ, Defendant and Appellant.	B336408 (Los Angeles County Super. Ct. No. BA261252)

APPEAL from a judgment of the Superior Court of Los Angeles County, H. Clay Jacke, II, Judge. Affirmed.

Victor J. Morse, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Senior Assistant Attorney General, Idan Ivri, Supervising Deputy Attorney General, and Roberta L. Davis, Deputy Attorney General, for Plaintiff and Respondent.

In 2007 Enrique Gonzalez was convicted by a jury of the murder of Gregory Gabriel and four counts of attempted willful, deliberate, and premeditated murder in connection with a February 14, 2004 shooting. Gonzalez appeals from the January 8, 2024 postjudgment order denying his petition for resentencing under Penal Code section 1172.6 (formerly section 1170.95)[1] with respect to his second degree murder conviction. Gonzalez contends the superior court erred in finding he had the requisite intent to prove he aided and abetted implied malice murder. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Evidence at Trial*

We described the 2004 killing of Gabriel in our opinion in *In re Gonzalez* (Jan. 23, 2019, B285807) [nonpub. opn.] (*Gonzalez II*). At trial, the People presented evidence of three killings, two of which are relevant here.

1. *The February 13, 2004 shooting* (*counts 1-3*)

On the morning of February 13, 2004, Francisco Amezcua was driving a car with his friends Jorge Lua and Carlos Zepeda. Lua was in the front passenger seat, and Zepeda was in the rear seat. Amezcua stopped at a light, then after hearing gunshots from a local nightclub, he got scared and tried to back up. He collided with a red car in which Carlos Argueta was the passenger. Argueta "looked angry" and used his Sten Mark submachine gun, which required two hands to carry and operate, to fire nine shots into Amezcua's car. Amezcua ducked, but Lua

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[1] Further statutory references are to the Penal Code.

was shot and later died from two gunshot wounds. Amezcua and Zepeda survived. The Sten Mark's magazine held 32 nine-millimeter bullets and could be fired in either a semiautomatic or fully automatic mode. At trial, Amezcua identified Gonzalez as the driver and Argueta as the passenger and shooter.[2]

2. *The February 14, 2004 shooting* (*counts 4 through 8*)

On February 14, 2004 four school friends went to a nightclub—12-year-old Gabriel, 14-year-old Marvin Emmanuel, 15-year-old Camille Johnson, and Johnson's sister, 13-year-old Girnet Hart. Johnson noticed the people at the club seemed older and largely Hispanic. Emmanuel told Gabriel, "[T]here were too many Mexicans." Gonzalez overheard the remark and walked over to the group. He asked what they had said about Mexicans. The minors denied saying anything. Gonzalez responded, "You fools is talking about Mexicans." Gonzalez "threw out" the letters of his "tag-banging" crew T.C.A.[3] as he continued to ask what the minors had said. Hart became scared because she believed Gonzalez would not be "throwing out" letters unless he was connected to a gang.

Gonzalez became angry. He asked Gabriel and Emmanuel, "Where are you fools from?" They responded they were just

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[2] Gonzalez was found not guilty on counts 1 through 3 in connection with the February 13, 2004 shooting. We include the incident because it is relevant to Gonzalez's intent with respect to the February 14 shootings.

[3] Gonzalez and Argueta belonged to the tag-banging crew T.C.A. A tag-banging crew is a tagging crew whose activities have escalated to include crimes, but where the police have not yet categorized the group as a criminal street gang.

students and denied being from anywhere. Johnson recognized Gonzalez's question as a challenge. She knew when a gang member asks this question it meant there was "going to be a conflict. A big conflict." Hart ran across the street and started praying.

Gonzalez called out to Argueta, who was standing across the street. Gonzalez told him to come over and "bring the strap." Argueta approached, holding a Sten Mark gun in two hands, and stood close to Gonzalez. Gonzalez told him, "These fools was talking about Mexicans." Gonzalez told Argueta they did not know T.C.A. One of the friends asked what T.C.A. stood for, and either Gonzalez or Argueta told them. Argueta and Gonzalez were angry. Argueta pointed his gun in Johnson's face. Johnson asked Argueta if he was going to shoot her. Argueta smiled and told Johnson he was not going to shoot her, but he then pointed the gun at Emmanuel and Gabriel. They were very scared, and Gabriel started crying.

Two security guards came out of the nightclub. One of the guards told Argueta, "[T]hese are kids. Don't be bothering them." Gonzalez said, "No. They disrespected us." Argueta added, "I don't care. They disrespecting T.C.A." Johnson started to walk away, and Emmanuel and Gabriel followed. Gonzalez and Argueta walked back across the street. Thinking the crisis was over, Hart recrossed the street to join her sister.

Seconds later gunshots were fired. Everyone tried to run into the club. Johnson, Emmanuel, and Hart started running. Hart was hit twice by the bullets. She ran into the club's bathroom and collapsed. Gabriel was hit twice in his back and fell on the sidewalk. Another club patron, Rene Jesus Jimenez, was on the sidewalk when several bullets struck his chest. He

told police that two Hispanic shooters were standing next to each other, each holding a gun, one of which looked like a machine gun. Gabriel died that night from two bullets to his back. Jimenez and Hart were severely injured, but survived. Officers found 21 nine-millimeter shell casings at the scene.

3. *Gonzalez's arrest and statements*

The police subsequently arrested Argueta and Gonzalez. Gonzalez admitted in a taped interview with respect to the February 14 incident that he got angry when he heard Emmanuel say, "There's too many Mexicans up in here." He was "mad" that one of the boys said "something about [his] people." He said he argued with the "black people." Gonzalez admitted he was a member of T.C.A. with the moniker "Epic Loc." He also admitted he called Argueta "over and told him to bring the strap." The detective suggested to Gonzalez that he "got to say" he did not know Argueta was going to shoot the minors, but instead only wanted to scare them. Gonzalez answered, "Yeah." Gonzalez added, "Just like just scare them, you know, with the gun and tell them not to say that no more." Gonzalez stated the minors "started the argument, I guess, I took it to the next level or whatever. He didn't have to start shooting." Gonzalez told the police that after the encounter in front of the nightclub, he and Argueta walked back to their car, but as Gonzalez started to get in the passenger seat of the car, Argueta ran back up the street and started firing the gun. Argueta then returned to the car with Gonzalez in the passenger seat, and they drove away.

Gonzalez denied being with Argueta on the night of the February 13 shooting. But he admitted he had known about the shooting when on February 14 he called Argueta over and told him to bring his "strap." Gonzalez acknowledged the incident the

night before involved a driver backing into Argueta's car, "and then came all the shots." Argueta had told Gonzalez they "let off on some fools cause they crashed into his car" and "they busted on them."

B. *The Jury Instructions, Verdict, and Sentencing*

The trial court[4] instructed the jury with CALCRIM Nos. 400 and 401 on direct aider and abettor liability for the first degree murder of Gabriel, as well as CALCRIM No. 403 regarding the natural and probable consequences doctrine. The court also instructed the jury that it did not need to agree unanimously on the theory of liability. In her closing argument the prosecutor argued both theories of liability.

The jury convicted Gonzalez of the first degree murder of Gabriel (§ 187, subd. (a)) and the attempted premeditated, deliberate, and willful murders of Hart, Jimenez, Emmanuel, and Johnson. (§§ 664, 187, subd. (a)). The jury also convicted Gonzalez of the attempted murders of Miguel Ramos and Robert Carrillo in connection with a shooting on February 19, 2004.[5] The jury found true as to each count the allegations

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[4] Judge Curtis B. Rappe presided over the trial and resentencing hearings through 2020.

[5] The jury heard testimony about a February 19, 2004 incident in which Argueta shot at Ramos (who had testified at the preliminary hearing on charges against Argueta's younger brother) and Ramos's friend Carrillo. Gonzalez was driving the car in which Argueta opened fire with his Sten Mark gun. That incident is not at issue in this appeal.

Gonzalez knew a principal was personally armed with a firearm in the commission of the offenses. (§ 12022, subd. (d).)

The trial court sentenced Gonzalez to 25 years to life on the murder count, plus a consecutive term of two years for the firearm enhancement. The court also imposed six consecutive life terms for each of Gonzalez's attempted murder convictions. The court imposed a consecutive eight-month term (one-third the middle term of two years) for the firearm enhancement on one of the attempted murder counts and stayed the remaining counts.

C. *Gonzalez's Appeal (*Gonzalez I*) and Petition for Writ of Habeas Corpus (*Gonzalez II*)*

In 2008 we affirmed Gonzalez's convictions but remanded to the trial court for resentencing on the firearm enhancements. (*People v. Gonzalez* (Apr. 29, 2008, B197530) [nonpub. opn.] (*Gonzalez I*).) The court on remand imposed seven 2-year firearm enhancements. Gonzalez did not appeal.

On October 20, 2017 Gonzalez filed a petition for a writ of habeas corpus seeking relief from his first degree murder conviction under *People v. Chiu* (2014) 59 Cal.4th 155, 167.[6] We granted Gonzalez's petition, concluding the trial court committed *Chiu* error when it instructed the jury under both the legally valid direct aider and abettor theory and the legally invalid natural and probable consequences theory of first degree murder, and the error was not harmless. (*Gonzalez II, supra*, B285807.) On remand, the People elected not to retry the case, and the

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[6] The Supreme Court in *People v. Chiu, supra*, 59 Cal.4th at page 167 held the natural and probable consequences theory of aiding and abetting a crime cannot be the basis for convicting a defendant of first degree murder.

prosecutor requested Gonzalez be sentenced for second degree murder. The trial court continued the hearing to allow Gonzalez to file a petition for resentencing under former section 1170.95.

D. *Gonzalez's 2019 Petition for Resentencing and Evidentiary Hearing*

On September 17, 2019 Gonzalez, represented by counsel, filed a form petition for resentencing seeking to vacate his murder conviction and be resentenced in light of Senate Bill No. 1437 (2017-2018 Reg. Sess.) (Senate Bill 1437). Gonzalez declared he was convicted of first or second degree murder pursuant to the felony murder rule or the natural and probable consequences doctrine and could not currently be convicted of murder because of changes made to sections 188 and 189, effective January 1, 2019. He also checked the box on the form stating he was not the actual killer and did not act with the intent to kill.

At the March 10, 2020 evidentiary hearing on Gonzalez's petition, the parties relied on the trial transcript. Gonzalez's attorney argued that a rational juror could reasonably conclude Gonzalez intended that Argueta use a gun only to instill fear in the minors by pointing it at them, not to kill them. The trial court rejected this argument, explaining in its written ruling that Gonzalez's statement that he intended only to scare the victims when he told Argueta to bring the "strap" was a "self-serving effort to minimize guilt[] [and] did not bind the jury, which reasonably could have looked to the other evidence, which suggested Gonzalez intended and expected Argu[e]ta to shoot." The court denied the petition, reasoning "the logical interpretation of the statute is the People have to show that given all the evidence, including the record, [Gonzalez] could be

convicted if he were retried at this point." Further, "the evidence was sufficient that the People, if they had retried this, could have convicted him on a direct aider and abettor theory."

Gonzalez appealed, and we reversed on the basis the trial court applied an incorrect standard of proof. We ordered the court to hold a new evidentiary hearing at which the court "is to apply the beyond-a-reasonable-doubt standard of proof and make express findings as to whether Gonzalez is guilty of second degree murder as an aider and abettor pursuant to amended sections 188 and 189." (*In re Gonzalez* (Oct. 18, 2021, B305502) [nonpub. opn.] (*Gonzalez III*).)[7]

E. *The 2023 Evidentiary Hearing*

On September 9, 2022, following our decision in *Gonzalez III, supra*, B305502, Gonzalez filed a second petition for resentencing as to both his second degree murder conviction and his six convictions of attempted willful, deliberate, and premeditated murder. The People in their response conceded that Gonzalez had established a prima facie case of eligibility on his murder and attempted murder convictions and that the superior court should issue an order to show cause and set an evidentiary hearing. On February 22, 2023, the parties stipulated to the court holding an evidentiary hearing.

On August 15, 2023 Gonzalez filed a brief in which he argued that he was not the shooter, did not act with conscious

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[7] We also concluded the trial court erred in resentencing Gonzalez following our issuance of a writ of habeas corpus by imposing seven 2-year firearm enhancements under section 12022, subdivision (d). (*Gonzalez III, supra*, B305502.) The firearm enhancements are not at issue in this appeal.

disregard for life, and under *People v. Reyes* (2023) 14 Cal.5th 981, 989 (*Reyes*), did not have the objective or subjective intent to commit implied malice murder. Specifically, Gonzalez's acts in calling Argueta to where Gonzalez was standing with the minors and telling Argueta to bring his gun were not objectively or subjectively dangerous to human life, especially given that some of the minors thought Argueta was joking and did not intend to harm them. In addition, the superior court should consider that Gonzalez's adolescent brain was not fully developed, and therefore he was more vulnerable to peer pressure and riskier decision-making. In their brief the People argued that Gonzalez acted with implied malice because he was aware of the risk to human life in calling Argueta over with "the strap" in response to the teenagers' disrespect, and he intended to harm (not scare) them.

On August 25, 2023 the superior court held an evidentiary hearing. Kristina Malek, a forensic psychologist, testified for Gonzalez as an expert on late adolescent brain development, which applied to young adults from 18 to 21 years old. Gonzalez was 18 years old at the time of the offense. Malek testified that in late adolescence, the brain's frontal lobe is not fully developed, resulting in poor decision-making when the adolescent is in an emotional state or heightened state of arousal. Further, late adolescents are more prone to high-risk behavior and subject to peer pressure.

At the hearing, the prosecutor highlighted that when Gonzalez called Argueta over with "the strap," Gonzalez knew about Argueta's shooting the night before the murder, and Gonzalez acted with conscious disregard of the risk Argueta would shoot the teenagers. Gonzalez's attorney responded that

Gonzalez's statement to the police that he knew Argueta had "let off on some fools" the night before did not support the inference that Argueta had fired shots at the individuals the prior night. Thus, the evidence only showed Gonzalez wanted to "terrify" and "intimidate" the teenagers, not to shoot at or kill them. Further, simply calling Argueta over with the gun was not enough to show Gonzalez's conscious disregard for life given the characteristics of a young adult in his late adolescence.

On January 8, 2024, the superior court denied Gonzalez's petition for resentencing as to his murder conviction, finding as "an independent factfinder" that the People met their burden to prove beyond a reasonable doubt that Gonzalez was guilty of implied malice murder based on a direct aiding and abetting theory. The court explained as to the February 14 incident that Gonzalez's statement to Argueta to bring over the strap after the minors made the comment about Mexicans "was not to simply scare the kids (the word 'scare' was adopted by [Gonzalez] during the police interview), because [Gonzalez] scared the kids all by himself! The evidence shows that [Gonzalez] wanted to harm the kids. [Gonzalez] knew from what he was told about the night before, that it would not take much to prompt [Argueta] to shoot." The court continued, "[Gonzalez], in his statement to police, tried to distance himself from [Argueta] by saying he was at the car and [Argueta] went forward alone. This is contradicted by [Gonzalez]'s own statement that he was in front of [Argueta] when the shooting started. . . . The victims placed [Gonzalez] and [Argueta] close together during the incident. [Gonzalez] knew what [Argueta] was capable of and simply didn't care what happened."

In analyzing these facts, the superior court first addressed the actus reus under *People v. Powell* (2021) 63 Cal.App.5th 689, 713, stating, "[Gonzalez] called over his fellow tag-banger to the area in which [Gonzalez] had been insulted by the insensitive comments of the four kids. [Gonzalez] asked, where they were from? and did they bang? He told [Argueta] to 'bring the strap.' [Gonzalez] ignored the warning of the security guards to leave the kids alone and said, 'They insulted us!' [Argueta] said, 'They disrespected TCA!' [Argueta] fired into a crowd with a submachine gun, possibly in full-automatic mode, approximately 21 rounds, filling the victim." The court described the shooting as "ferocious, unusual and completely unexpected by [Gabriel]. . . . [Gonzalez], who was a gang member/tag-banger, had a motive to harm the victim, as evidenced by his gang related statements."

With respect to Gonzalez's mens rea, the superior court found Gonzalez "knew that just the night before, [Argueta] had 'blasted some fools' for running into his car. He knew [Argueta] had a submachine gun because he requested that he 'bring the strap.' Thus, he knew [Argueta] was willing to shoot with little or no provocation. [Gonzalez] told the police he did so because he wanted to scare the kids. He felt disrespected and knew that [Argueta] felt [the TCA tagging crew] had been disrespected by the kids. The evidence is such that, at the very least, [Gonzalez] was aware of and consciously disregarded the dangers of scaring those who disrespected members of TCA while using a submachine gun." The court highlighted that Gonzalez "did not tell or try to get [Argueta] to stop shooting. He was silent and didn't try to help anyone after [Argueta] fired approximately 21 rounds from the submachine gun. [Gonzalez] knew what

[Argueta] was capable of and simply didn't care what happened." Further, Gonzalez and Argueta "fled the crime scene. This demonstrates a 'callous indifference to human life.'"

With respect to the attempted murders of Hart, Jimenez, Emmanuel, and Johnson (counts 5 through 8), the superior court found the evidence was insufficient to find Gonzalez guilty beyond a reasonable doubt.[8] The court denied Gonzalez's petition with respect to the attempted murders on February 19 of Ramos and Carrillo (counts 9 and 10).

The superior court resentenced Gonzalez to an aggregate state prison term of 29 years to life, plus 10 years. The court again imposed a term of 15 years to life for his conviction of second degree murder (count 4). With respect to counts 5 through 8 for attempted willful, deliberate, and premeditated murder, the court redesignated each count as a conviction for assault with a firearm (§ 245, subd. (b)(2)). The court imposed the middle term of three years on count 5 and consecutive terms of one year (one-third the middle term of three years) on counts 6, 7, and 8. The court imposed consecutive terms of seven years to life on counts 9 and 10 for attempted murder (the February 19 incident). The court also imposed one-year terms for the firearm enhancements on counts 4, 5, 6, and 9 under section 12022, subdivision (a)(1), and stayed the firearm enhancements on counts 7, 8, and 10.

Gonzalez timely appealed the superior court's January 8, 2024 order denying his request for resentencing with respect to his murder conviction.

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[8] Following the evidentiary hearing, the prosecutor filed a supplemental brief conceding the evidence was insufficient to prove Gonzalez had committed the four attempted murders.

DISCUSSION

A. *Senate Bill 1437 and Section 1172.6*

Senate Bill 1437 eliminated the natural and probable consequences doctrine as a basis for finding a defendant guilty of murder and significantly limited the scope of the felony-murder rule. (*People v. Patton* (2025) 17 Cal.5th 549,558; *People v. Curiel* (2023) 15 Cal.5th 433, 448-449 (*Curiel*); *People v. Strong* (2022) 13 Cal.5th 698, 707-708 (*Strong*).) Section 188, subdivision (a)(3), now prohibits imputing malice based solely on an individual's participation in a crime and requires proof of malice to convict a defendant of murder, except under the revised felony-murder rule as set forth in section 189, subdivision (e). (*Patton*, at p. 558; *Curiel*, at p. 448.)

Senate Bill No. 775 (2021-2022 Reg. Sess.), effective January 1, 2022, expanded the scope of potential relief by applying Senate Bill 1437's ameliorative changes to individuals convicted of attempted murder and voluntary manslaughter. (See § 1172.6, subd. (a).) The legislation also extended relief to defendants convicted of murder under any "other theory under which malice is imputed to a person based solely on that person's participation in a crime." (§ 1172.6, subd. (a), as amended by Stats. 2021, ch. 551, § 2; see *People v. Antonelli* (2025) 17 Cal.5th 719, 725.)

Section 1172.6 provides a procedure for an individual convicted of felony murder, murder or attempted murder under the natural and probable consequences doctrine, or manslaughter to petition the sentencing court to vacate the conviction and be resentenced on any remaining counts if the individual could presently not be convicted of murder, attempted murder, or manslaughter because of changes to sections 188 and 189.

(*Curiel*, *supra*, 15 Cal.5th at pp. 449-450; *Strong, supra*, 13 Cal.5th at p. 708.)

If the petition contains all the required information, including a declaration by the petitioner that he or she is eligible for relief based on the requirements of subdivision (a), the sentencing court, upon request, must appoint counsel to represent the petitioner. (§ 1172.6, subd. (b)(3); *People v. Lewis* (2021) 11 Cal.5th 952, 962-963.) After briefing by the parties, the court must hold a hearing to determine whether the petitioner has made a prima facie showing of entitlement to relief. (§ 1172.6, subd. (c); see *Curiel, supra*, 15 Cal.5th at p. 450.)

If the petitioner makes the requisite prima facie showing of entitlement to relief, the superior court must issue an order to show cause and hold an evidentiary hearing to determine whether to vacate the challenged conviction and resentence the petitioner on any remaining counts. (§ 1172.6, subds. (c) & (d)(1).) If, however, "the petition and record in the case establish conclusively that the defendant is ineligible for relief," the court may deny (or dismiss) the petition. (*Strong, supra*, 13 Cal.5th at p. 708; accord*, Curiel, supra*, 15 Cal.5th at p. 450; see § 1172.6, subd. (c).)

Section 1172.6, subdivision (d)(3), provides that at the evidentiary hearing, "the burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the petitioner is guilty of murder or attempted murder under California law as amended by the changes to Section 188 or 189 made effective January 1, 2019. The admission of evidence in the hearing shall be governed by the Evidence Code, except that the court may consider evidence previously admitted at any prior hearing or trial that is admissible under current law, including

witness testimony, stipulated evidence, and matters judicially noticed." Further, "[t]he prosecutor and the petitioner may also offer new or additional evidence to meet their respective burdens." (§ 1172.6, subd. (d)(3).)

We review the superior court's decision to deny the petition after an evidentiary hearing for substantial evidence but review independently "whether the trial court misunderstood the elements of the applicable offense." (*Reyes, supra*, 14 Cal.5th at pp. 988-989.)

B. *Substantial Evidence Supports the Superior Court's Finding of Aider and Abettor Liability for Implied Malice Murder*

"'[N]otwithstanding Senate Bill 1437's elimination of natural and probable consequences liability for second degree murder, an aider and abettor who does not expressly intend to aid a killing can still be convicted of second degree murder if the person knows that his or her conduct endangers the life of another and acts with conscious disregard for life.'" (*Reyes, supra*, 14 Cal.5th at p. 990; accord, *People v. Rivera* (2021) 62 Cal.App.5th 217, 232 [after Senate Bill 1437 was enacted, "a person may still be convicted of second degree murder, either as a principal or an aider and abettor, 'if the person knows that his or her conduct endangers the life of another and acts with conscious disregard for life'"].)

"'[D]irect aiding and abetting is based on the combined actus reus of the participants and the aider and abettor's own mens rea. [Citation.] In the context of implied malice, the actus reus required of the perpetrator is the commission of a life-endangering act. For the direct aider and abettor, the actus reus includes whatever acts constitute aiding the commission of the

life-endangering act. Thus, to be liable for an implied malice murder, the direct aider and abettor must, by words or conduct, aid the commission of the life-endangering act, not the result of that act. The mens rea, which must be personally harbored by the direct aider and abettor, is knowledge that the perpetrator intended to commit the act, intent to aid the perpetrator in the commission of the act, knowledge that the act is dangerous to human life, and acting in conscious disregard for human life.'" (*Reyes, supra*, 14 Cal.5th at pp. 990-991; accord, *People v. Powell, supra,* 63 Cal.App.5th at pp. 712-713.)

With respect to Gonzalez's actus reus, to prove implied malice murder the People needed to prove that Gonzalez, by words or conduct, aided the commission of the life-endangering act—the shooting. (*Reyes, supra*, 14 Cal.5th at pp. 990-991.) Substantial evidence supports the superior court's finding this requirement was met. After the minors made insulting comments about Mexicans, Gonzalez became angry and escalated the confrontation into a gang challenge: he threw out gang signs and asked the minors where they were from; the minors responded they were not from anywhere. A police gang expert testified at trial that asking "where you are from" was a gang challenge that, when made by a member of a tag-banging crew, would generally result in a fight, stabbing, or shooting.

After Gonzalez made the gang challenges, he called Argueta over and directed him to "bring the strap," referring to the Sten Mark submachine gun. Gonzalez told Argueta that the minors were disparaging Mexicans and they were not aware of T.C.A. (a form of disrespect). Argueta responded by pointing his gun first at Johnson, and then at Emmanuel and Gabriel. As the superior court noted, Gonzalez and Argueta ignored the direction

from the security guards to leave the minors alone, responding that the minors had disrespected them and T.C.A. Gonzalez therefore aided the shooting by calling for Argueta to cross the street with his submachine gun to help Gonzalez confront the group of minors, then making clear that the minors were disrespecting T.C.A., which triggered a violent response.[9]

With respect to Gonzalez's mens rea, the relevant inquiry is whether Gonzalez knew Argueta intended to commit the act (shooting the gun at the minors), intended to aid Argueta in the shooting, knew the shooting was dangerous to human life, and acted in conscious disregard for human life. (*Reyes*, *supra*, 14 Cal.5th at p. 992.) The evidence amply supports the superior court's finding these requirements were met. Although Gonzalez told the detectives after the shooting that his intent in calling Argueta over with the Sten Mark gun was only to scare the minors, the court did not find this statement credible, noting that by the time Gonzalez called Argueta over, Gonzalez had already scared the minors. Rather, the court found, Gonzalez "wanted to harm these kids." The court therefore reasonably concluded that Gonzalez wanted to harm the minors for their disparaging comments—by calling over a tag-banging member carrying a submachine gun. Further, Gonzalez admitted that when he called Argueta over, he was aware that the prior night Argueta had fired at some men, telling Gonzalez he had "busted on" some

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[9] The gang expert testified that if a member of the tag-banging crew is disrespected, it would be incumbent on the member to respond, or the tag-banging crew would suffer in how it is viewed in the neighborhood.

fools and "let off on some fools cause they crashed into his car."[10] The court found based on the prior night's incident that Gonzalez knew "it would not take much to prompt [Argueta] to shoot."

It is a reasonable inference, as the superior court found, that Gonzalez knew Argueta would use the submachine gun to fire at the minors if he were provoked, in this case by the minors disrespecting Gonzalez and Argueta and their gang. And it was a reasonable inference that Gonzalez knew that shooting at the minors with a submachine gun would be dangerous to human life. Moreover, as the court pointed out, there was evidence Gonzalez stood close to Argueta as Argueta fired 21 rounds, never telling Argueta to stop shooting or taking action to help the victims. Had Gonzalez only wanted to scare the minors, he could have walked away with Argueta when the security guard told them to leave the minors alone, but he instead instigated the shooting by repeating that the minors had disrespected them and their gang.

Gonzalez contends his calling Argueta over with the "strap" and stating the minors had disrespected them and T.C.A. were not sufficient life-endangering acts under *Reyes* because Gonzalez's conduct did not aid Argueta's shooting and there was no evidence Gonzalez *knew* that Argueta intended to shoot the minors. Gonzalez relies on the language in *Reyes* that "[t]o suffice for implied malice murder, the defendant's act must not merely be dangerous to life in some vague or speculative sense; it must "'involve[] a high degree of probability that it will result in

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[10] Gonzalez argues there was no evidence he knew Argueta's comments that he "let off on some fools" and "busted on them" meant he shot at them. But Gonzalez admitted to the detectives that Argueta had shot his gun the prior night.

death.'"'" (*Reyes, supra*, 14 Cal.5th at p. 989.) Contrary to Gonzalez's characterization, in light of Argueta's shooting the night before upon the minimal provocation of being hit by another car, it was a reasonable inference that Gonzalez knew there was a high probability that Argueta would fire his submachine gun at the minors in response to their disrespect for Mexicans and T.C.A., and that Gonzalez's conduct was intended to cause harm to the minors.

We likewise do not find persuasive Gonzalez's argument that the disparaging remarks made by the minors, which he describes as "mildly offensive," did not rise to the level of what the "belligerent adults" did the night before. The record does not show the adults in the car (who accidentally hit Argueta's car) were "belligerent," nor does the record support Gonzalez's contention the statement that there were "too many Mexicans" was only mildly offensive to Gonzalez given Gonzalez's statement to the detectives that the comment made him "mad." Moreover, we do not reweigh the evidence in reviewing the superior court's order for substantial evidence. (*People v. Brown* (2014) 59 Cal.4th 86, 106; *People v. Cody* (2023) 92 Cal.App.5th 87, 112-113 [in evaluating evidence at evidentiary hearing on § 1172.6 petition, "[o]ur role is not to reweigh the evidence, nor is it our role to judge the credibility of witnesses"].)

Finally, Gonzalez argues his youth and state of arousal would have made it unlikely he would have perceived the danger in calling over Argueta with his Sten Mark gun to confront the minors. As discussed, Dr. Malek testified that late adolescents like Gonzalez are more prone than adults to take risks and are subject to peer pressure. But there was no evidence that Gonzalez acted in response to pressure from Arteaga. And even

adolescents would understand the risk to human life of threatening minors with a large submachine gun that took two hands to hold. The superior court considered Dr. Malek's testimony in making its decision, and we do not reweigh the evidence in determining whether Gonzalez reasonably would have known that a gang member who had used his submachine gun the night before to fire at two men would use it again to fire at minors disrespecting him and his gang.

Substantial evidence therefore supported the superior court's finding beyond a reasonable doubt that Gonzalez aided and abetted implied malice murder.

DISPOSITION

The January 8, 2024 order denying Gonzalez's petition for resentencing is affirmed.

FEUER, J.

We concur:

MARTINEZ, P. J.

STONE, J.