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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Appellant, v. CHRISTOPHER WILLIAM RAAHAUGE et al., Defendants and Respondents.	E034732 (Super.Ct.No. RIF110752) OPINION

APPEAL from the Superior Court of Riverside County. W. Charles Morgan, Judge. Reversed.

Grover Trask, District Attorney, and Elise J. Farrell, Deputy District Attorney, for Plaintiff and Appellant.

Linn Davis, under appointment by the Court of Appeal, for Defendant and Respondent Christopher William Raahauge.

Michael J. Egan, under appointment by the Court of Appeal, for Defendant and Respondent Michael James Massa.

The People appeal from a Penal Code section 995[1] order dismissing a count for actively participating in a gang (§ 186.22, subd. (a)) and the gang enhancements (§ 186.22, subd. (b)) appended to other counts of the information. We reverse, concluding: (1) The charges in this case against two members of the Norco chapter of the Vagos motorcycle "club" were sufficient to establish a pattern of criminal activity. (2) Evidence of repeated and consistent criminal activity by other Vagos chapters and expert testimony regarding the primary activities of the Vagos "club" were adequate to establish that crime was the primary activity for the Vagos "club." (3) Defendants' knowledge of criminal activity by other Vagos chapters can be inferred from defendants' reliance on the negative Vagos image to intimidate a witness.

STATEMENT OF FACTS

In June 2003, the owner of a skate shop testified in a shoplifting case against the brother of defendant Raahauge. A former employee named Desiree witnessed the shoplifting incident, but did not testify against Raahauge's brother.

The prosecutor and investigator involved in the shoplifting case subsequently went to the skate shop to review a surveillance videotape of the shoplifting incident to determine whether Raahauge's brother was clearly visible. While they were in the back

[1] All further statutory references will be to the Penal Code unless otherwise indicated.

room watching the videotape, defendants entered the shop wearing Vagos motorcycle "club" clothing. The shop owner told the prosecutor and investigator that he was concerned about the presence of bikers, particularly since he did not get many bikers in his shop.

The shop owner approached defendants and asked if they needed any help. Raahauge asked if Desiree still worked there and the shop owner said no. Raahauge then asked the shop owner what his name was and the shop owner gave his name. Raahauge said "nice to meet you," shook the shop owner's hand, and introduced himself. The shop owner immediately recognized the Raahauge name.

Defendants left the store and stood by their motorcycles for about five or 10 minutes while Raahauge talked on a cellular telephone and pointed at the store. The investigator called for assistance and asked the Sheriff's department to make contact with defendants. Defendants were followed to a location called the "Raahauge Shooting Range," where they were arrested.[2] Raahauge attempted to hand his Vagos jacket to a boy, but the police retained the jacket.

The shop owner was escorted home and spent the night at his sister-in-law's home. The shop owner subsequently told someone in the prosecutor's office that he could not positively identify Raahauge's brother.

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[2] Raahauge's family converted an old pheasant hunting club into a shooting range where they hold a yearly handgun fair.

Defendants were initially charged with witness intimidation (§ 136.1) with a gang enhancement (§ 186.22, subd. (b)). During the preliminary hearing, the shop owner testified that although he immediately recognized the Raahauge name, he was not frightened or intimidated by defendants or their Vagos clothing. However, the investigator testified that after Raahauge introduced himself, the shop owner was visibly nervous, expressed concerned for the safety of himself and his family, and wanted to go home and get a gun.

A gang expert testified that the Vagos gang has approximately 250 to 300 members, with chapters in several western states, including approximately 25 chapters in California. The expert alleged that the primary purposes of the Vagos gang are selling methamphetamine and weapons, committing assaults, and intimidating witnesses. The expert explained that witness intimidation benefited the gang by ensuring that citizens were too afraid to report the gang's other crimes.

The expert indicated that between April 2000 and June 2002, an undercover federal agent purchased large amounts of methamphetamine and weapons from 15 different Vagos members from five or six different Vagos chapters. The expert was also aware of an incident where two members of the Corona chapter kidnapped a person suspected of stealing a motorcycle and tortured him in an effort to get the motorcycle back. Both members of the Corona chapter pleaded guilty to kidnapping and assault, and admitted that the crimes were for the benefit of the Vagos gang.

The expert indicated that Raahauge was the secretary and a founding member of the Norco chapter of the Vagos gang, which had been in existence approximately eight months prior to his arrest. Massa was merely a prospective member of the Norco chapter, which meant that he had to prove himself by following orders and protecting the members. The expert was told by members of the Norco chapter that it was the "NA/AA" chapter. The Norco chapter had eight to 12 members, several of whom were convicted felons with a history of drug and weapon violations. The expert had no evidence that Raahauge's brother was a Vagos member.

The expert opined that defendants' conduct in confronting the shop owner benefited the Vagos gang by instilling fear and discouraging people from reporting their criminal activities. Although the witness intimidation directly benefited someone who was not a Vagos member (Raahauge's brother), the expert opined that it still benefited the Vagos gang because defendants were wearing their Vagos clothing and therefore represented the Vagos gang.

On cross-examination, the expert admitted that of the 50 gang cases he had previously worked on, none had involved the Vagos gang. Of the 500 or so gang members that he had contacted over the years, only 10 or 15 were Vagos members. Besides this case, no other member of the Norco chapter had been arrested or convicted of any crime while a member.

After the preliminary hearing, the prosecution filed an information with two additional counts: actively participating in a gang (§ 186.22, subd. (a)) and burglary (§

459) with a gang enhancement (§ 186.22, subd. (b)). Defendants filed section 995 motions to dismiss based on lack of evidence. The court granted the motions in regard to the gang allegations, and dismissed the gang offense and gang enhancements. The People appeal.

DISCUSSION

1. *Criminal Street Gang*

On appeal, the parties dispute whether the prosecution adequately proved that the Vagos motorcycle "club" was a criminal street gang, which is defined as any group "[1] having as one of its primary activities the commission of one or more [enumerated offenses], [2] having a common name or common identifying sign or symbol, and [3] whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity." (§ 186.22, subd. (f).) Defendants challenge the first and third elements: criminal primary activity and pattern of criminal activity. Defendants concede that there was some evidence that members of other Vagos chapters engaged in a pattern of criminal activity as their primary activity, but argue that the criminal conduct of other chapters should not be used against the Norco chapter, which had a clean record until this incident.

a. *Pattern of Criminal Activity*

Defendants' arguments regarding a pattern of criminal activity fail because the charges in the instant case were sufficient proof of such a pattern. A pattern of criminal activity is defined as two or more enumerated offenses "committed on separate

occasions, *or* by two or more persons." (§ 186.22, subd. (e), italics added.) As a result of the italicized disjunctive, multiple occasions of criminal activity are not necessary to prove a pattern; instead, a pattern can also be proven by showing that multiple members participated in a single occasion of criminal activity. (*People v. Loeun* (1997) 17 Cal.4th 1, 5.) Thus, the instant charges against two members of the Norco chapter are sufficient on their own to establish the requisite pattern.

b. *Criminal Primary Activity*

Defendants' criminal primary activity argument is more difficult to address because we cannot rest our analysis solely on the current offenses. In order for criminal conduct to be a primary activity of the gang, it must represent "one of the group's 'chief' or 'principal' occupations," which "necessarily exclude[s] the occasional commission of those crimes by the group's members." (*People v. Sengpadychith* (2001) 26 Cal.4th 316, 323 [contrasting gang crimes from occasional crimes by police officers or members of environmental groups].) As a result, evidence of criminal conduct by members of a group will not establish a primary activity without proof that the conduct was engaged in "*consistently and repeatedly*." (*Id*. at p. 324.) The single occasion of criminal activity at issue in this case obviously fails in both respects. As a result, we must confront defendants' arguments that they should not be held accountable for criminal activity by other Vagos chapters.

We tend to agree that the sins of one chapter of an organization should not *necessarily* be visited on other chapters. Simply because a San Francisco chapter of

Greenpeace begins assaulting sport utility vehicle owners, that does not necessarily make assault the primary activity of a Riverside chapter. However, merely by affiliating with a parent organization, local chapters can be viewed as endorsing that organization's goals and conduct. Thus, if crime is the primary activity of the parent organization, then the same primary activity can be imputed to the local chapters.

Defendant notes that published cases regarding the Crip gang generally focus on the conduct of the specific subset to which the defendant belongs, not the general Crip organization. Perhaps, but there are other cases where experts examined the conduct of the parent organization rather than a specific chapter. (See *People v. Morales* (2003) 112 Cal.App.4th 1176, 1183 [defendant associated with Dial Boulevard subset of the La Puente-based Puente Trece gang]; *In re Jose P.* (2003) 106 Cal.App.4th 458, 463-464 [defendant associated with Santa Rita and Salinas East Market Street subsets of the sizable Norteno gang].) More importantly, there is nothing in the statute that would limit the analysis to the defendant's subset. The statute broadly applies to "any ongoing organization, association, or group of three or more persons, whether formal or informal" (§ 186.22, subd. (f)), which encompasses parent organizations as well as specific chapters.

Of course, this requires proof that crime is a chief or principal occupation of the parent organization, not just an occasional activity for some of its members or chapters. (See *People v. Sengpadychith*, *supra*, 26 Cal.4th at p. 323.) This can be accomplished in at least two ways: (1) evidence that other members or chapters of the parent organization

"*consistently and repeatedly*" committed enumerated offenses, or (2) opinion testimony regarding the purposes of the parent organization. (See *id*. at p. 324.) Both types of evidence were offered in this case. The federal methamphetamine and firearms sting operation represented a consistent and repeated pattern of criminality by other Vagos members and chapters, and the gang expert opined that the chief purpose of the Vagos organization was to commit enumerated offenses. This evidence was adequate to satisfy the "exceedingly low" standard applicable to a preliminary hearing, where only a "total absence of evidence" will justify setting aside an information because the prosecution need only provide "some rational ground for assuming the possibility that an offense has been committed and the accused is guilty of it." (*Salazar v. Superior Court* (2000) 83 Cal.App.4th 840, 842, 846.)[3]

2. *Knowledge of Criminal Activity*

In order to commit a gang offense, defendant must act "with knowledge that its members engage in or have engaged in a pattern of criminal gang activity." (§ 186.22, subd. (a).) Defendants argue that they should not be charged with knowledge of criminal activity by members of other Vagos chapters. We disagree. Defendants' knowledge can be inferred from their conduct in this case, where they are alleged to have intentionally used the negative Vagos image to intimidate the shop owner. That inference is adequate

[3] Defendant's reliance on *People v. Perez* (2004) 118 Cal.App.4th 151 is misplaced because it involved a post-trial challenge to the sufficiency of the evidence, which is subject to a more stringent burden of proof.

to satisfy the "exceedingly low" evidentiary standard for preliminary hearings. (*Salazar v. Superior Court*, *supra*, 83 Cal.App.4th at p. 846.)

DISPOSITION

The judgment is reversed.

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/s/ McKinster
Acting P.J.

We concur:

/s/ Ward
J.

/s/ Gaut
J.