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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re RENE O., a Person Coming Under the Juvenile Court Law.	H023439 (Monterey County Super.Ct.No. J35596)
THE PEOPLE, Plaintiff and Respondent, v. RENE O., Defendant and Appellant.	

I. Statement of the Case

On May 23, 2001, the Monterey County District Attorney filed a petition for juvenile wardship under Welfare and Institutions Code section 602, alleging that Rene O., (hereafter the minor), aged 14, committed a battery punishable as a felony for the benefit of a criminal street gang (Pen. Code, §§ 242; 186.22, subd. (d)),[1] and a misdemeanor battery, resisted arrest (§ 148, subd. (a)(1)), and violated a school suspension order (§ 626.2). Under Welfare and Institutions Code sections 726 and 777, the petition further alleged that a previous juvenile court disposition had not been

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[1] All further statutory references are to the Penal Code unless otherwise specified.

effective in rehabilitating the minor.[2] After overruling the minor's demurrer to the gang allegation, the juvenile court sustained the petition as to only the battery counts and the gang allegation. At the dispositional hearing, the court continued the minor as a ward of the court for two years and placed him on probation in the custody of his parents with the condition that he comply with the gang-registration requirement in section 186.30 et seq.

The minor appeals from the jurisdictional and dispositional orders. He broadly challenges the gang-registration requirement imposed under sections 186.22, subdivision (d) (hereafter section 186.22(d)) and 186.30, which were enacted as part of Proposition 21, the Gang Violence and Juvenile Crime Prevention Act of 1998 "the Act" (approved by the voters Mar. 7, 2000, Primary Election).[3] He claims Proposition 21 violated the single-subject rule for initiative measures and, if not, that section 186.22(d) is inapplicable to juvenile proceedings. Next, he claims that the court should have sustained his demurrer to the gang allegation, there is insufficient evidence to support the gang finding, and defense counsel rendered ineffective assistance in failing to raise a hearsay objection to testimony offered to prove the gang allegation. Last, he claims that sections 186.22(d) and 186.30 are unconstitutionally ambiguous, vague, and overbroad and that the registration requirement violates his state constitutional right of privacy, the federal constitutional prohibition against unreasonable searches and seizures, and his state and federal constitutional rights to counsel and privilege against self-incrimination. He further claims that imposition of the registration requirement violates the constitutional prohibitions against cruel and unusual punishment.

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[2] The previous disposition related to a petition filed on July 6, 2000, for felony burglary and misdemeanor larceny and a second petition filed on July 21, 2000, for misdemeanor battery.

[3] We have taken judicial notice of the text of Proposition 21 and the summary and arguments concerning it in the ballot pamphlet. (Evid. Code, §§ 452, subd. (c); 459; *People v. Hazelton* (1996) 14 Cal.4th 101, 107, fn. 2.)

We affirm the jurisdictional and dispositional orders.

The minor has also filed a petition for a writ of habeas corpus, which this court ordered considered with the appeal. In it he reiterates his claim of ineffective assistance based on counsel's failure to raise hearsay objection to gang evidence.

In a separate order filed this day, we issue an order to show cause returnable in the Monterey County Superior Court. (See Cal. Rules of Court, rule 24(a).)

II. Facts

A. The Minor's Conduct

On the morning of May 22, 2001, Jorge M. and his friend Mark were standing in front of Washington Middle School The minor and David I. were across the street. Jorge saw the minor "throwing 14," which is a hand gesture used by members of a Norteño gang to identify themselves. The minor and David and Jorge and Mark approached each other. The minor said something like "fucking ever do that to me" and "14 Boronda," which refers to a clique of the Norteños in Monterey County. The minor then punched Jorge in the head, and when Jorge backed up, the minor continued his attack.

Aurelio Gonzales, assistant principal at Washington Middle School, testified on the morning of May 22, he saw the minor and David charge across the street ready to attack. The minor was throwing gang signs. Gonzales rushed out, and as he tried to pull the minor away, they both fell down. The minor got up and came after Gonzales, ready to hit him. Gonzales fended him off, and the minor fled. He was later apprehended and arrested.

B. Gang Evidence

Officer Mark Lazzarini of the Salinas Police Department testified concerning criminal street gangs. He explained that there is a rivalry between Norteño and Sureño gang members. He opined that the Norteño gang is a criminal street gang as defined by statute, that is, an ongoing organization of more than three people that uses a variety of identifying symbols, signs, and tattoos, including "norte, norteno, X four, one four, the

number 14, dots on tattoos one and four, dots, [and] four dots by themselves." He explained that the primary activities of the gang includes the commission of homicide, robberies, rapes, drug possessions, carjackings, car theft, and witness intimidation and threats. Based on his review of police department reports of incidents that resulted in criminal prosecutions, he opined that the Norteño gang engages in a pattern of criminal activity.

In particular, he related two gang-related offenses. The first, which he referred to as "report number 00090361," occurred on September 5, 2000, in North Salinas. Three Norteño gang members, followed a motorist to an apartment complex. They were armed and accosted the motorist, yelling things like " 'where are you from' " and " 'norte.' " Police were summoned and the gang members were arrested for assault with a deadly weapon. Records from the subsequent prosecution, Monterey County case number 1002081, revealed that two of the perpetrators were convicted of assault with a deadly weapon with a gang enhancement, and the third was convicted of gang-related activity.

The second incident, "case number SS 001972 B," occurred on August 20, 2000, and involved two "Kilbreth criminal street gang members." Armed with handguns, the two robbed two pedestrians on North Main Street in Salinas. The victims notified police, and the suspects were arrested. Lazzarini said that he participated in the arrest and found the two in possession of firearms. They were ultimately convicted of armed robbery with gang enhancements.

Lazzarini reviewed documentary evidence from the police department concerning the minor and his association with gangs. He noted that the report concerning the incident at Washington Middle School related the minor's statements to Jorge and revealed that the minor was wearing red clothing. Lazzarini opined that when gang members throw gang signs and yell slogans, they are announcing who they are and making a challenge. Such conduct enhances the reputation of the gang, helps it gain notoriety for having the ability and fearlessness to commit crimes, and attracts new

members. He explained, "If one member is just claiming to be a norteno and they want to hook up with another norteno alliance that may be bigger or better than their specific clique, then by going out and committing crimes on [*sic*] the benefit of norteno, that's going to be a good recruiting tool for that gang [*sic*] members." Lazzarini also noted that such conduct also enhances the individual gang member's reputation and "shows that the person isn't afraid to commit crimes on [*sic*] the benefit of a gang name and they are willing to go out and put in work." He also explained that the more work a gang member puts in, the more recognition, popularity, and stature he or she receives from other gang members.

Given all of the relevant information, Lazzarini opined that the Washington Middle School incident was committed for the benefit of the Norteño criminal street gang because it would enhance the reputations of the minor and the Norteño gang. Lazzarini noted the minor's red clothing and the nature of the attack. He explained that the minor's reference to "14" and "Boronda" revealed his connection to north side Boronda, which is a Norteño group in the county. In this regard, he testified that the overall structure of the Norteño gang is formal at the prison level but on the streets is more informal. He explained that "the primarily [*sic*] norteno gang is the Nuestra Familia. The Nuestra Familia has set bylaws which are followed by the northern structure, a sister gang in the prison system and directed as basically rules for nortenos to follow and abide by while they are out acting as nortenos on the street. [¶] There are different cliques of nortenos gangs, one of them being Boronda. Other people just claim to be Norteños, that they believe in the Norteño philosophy. And those crimes that are committed by those gang members ultimately benefit everyone of the norteno gangs." Lazzarini noted a recent effort among individual Norteños to get away from claiming particular street gangs and just claim Norteño. He pointed out that in 1998, police officers obtained a note written by a Nuestra Familia member in prison that appeared to amend the groups "constitution." As related by Lazzarini, the note indicated that "if you believed in a philosophy that the

Nuestra Familia had, you would refer to yourself as a norteno and if you wanted to participate as a norteno gang member but didn't want to dedicate as much of your life to it then you would refer to yourself as a northerner. Both of them are levels of participation within the norteno gang."

III. Validity and Applicability of the Act

The minor contends that the Act may not be applied because Proposition 21 violated the single-subject rule concerning ballot initiatives. (Cal. Const., art. II, § 8, subd. (d).)[4]

In *Manduley v. Superior* Court (2002) 27 Cal.4th 537, 573-582, the California Supreme Court addressed and rejected this contention.

The minor further contends that the Act does not apply to juvenile adjudications. He asserts that the drafters clearly understood that different terminology is used in juvenile and adult cases. Thus, the drafters used both the term *conviction* and the phrase *petition sustained in a juvenile court*. (E.g., §§ 186.22, subd. (i); 186.30, subd. (b); 186.31; 186.33, subd. (b)(1) & (2).) He notes that the drafters also knew how to use generic language—e.g., *any person who* commits a particular act—when a particular provision applied to both juvenile and adult cases. (E.g., §§ 182.5; 186.26, subd. (a); 186.30, subds. (a) & (b).) On the other hand, the drafters made certain provisions applicable only to juveniles. (E.g., § 186.32, subd. (a)(1)(B); Welf. & Inst. Code, §§ 602.5; 790.) Moreover, he points out that Welfare and Institutions Code section 203 provides, "An order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding."

[4] This provision provides, "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect." (Cal. Const., art. II, § 8, subd., (d).)

With this background in mind, the minor notes that section 186.22(d), which was applied here, provides, in pertinent part, "Any person who is *convicted* of a public offense punishable as a felony or a misdemeanor, which is 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 be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in the county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the *defendant*, it shall require as a condition thereof that the *defendant* serve 180 days in a county jail." (Italics added.) The minor argues that the drafter's use of the legal terms of art *conviction* and *defendant* reflects an intent to exclude juvenile adjudications from the ambit of section 186.22(d). We disagree.

In construing statutes, our fundamental goal is to "ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*People v. Jenkins* (1995) 10 Cal.4th 234, 246.) To find intent, we first turn to the words of the statute. Viewing them in context and in light of the nature and obvious purpose of the statute, we give the words their plain, everyday, commonsense meaning. If we find no ambiguity or uncertainty, we simply presume the Legislature meant what it said, which makes further inquiry into legislative intent unnecessary. However, if we find the statutory language susceptible to more than one reasonable interpretation, we may then turn to extrinsic indicia of intent, such as legislative history, public policy, and the statutory scheme of which the statute is a part. And where the language of a *penal* statute is susceptible to alternative reasonable interpretations, we give the defendant the benefit of a doubt and interpret it as favorably to him or her as is reasonably possible, being careful, however, to avoid interpretations

that would frustrate the purpose of a statute, render it nugatory, or lead to an absurd result. (*People v. Murphy* (2001) 25 Cal.4th 136, 142; *People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 192; *People v. Alvarado* (2001) 87 Cal.App.4th 178, 185-186; *People v. Rackley* (1995) 33 Cal.App.4th 1659, 1665-1666.)

The same rules apply in interpreting a voter initiative (*People v. Rizo* (2000) 22 Cal.4th 681, 685), with the focus of our inquiry being "the electorate's purpose, as indicated in the ballot arguments and elsewhere." (*Hodges v. Superior Court* (1999) 21 Cal.4th 109, 114.)

In re Jovan B. (1993) 6 Cal.4th 801, the California Supreme Court addressed the same argument raised here vis-à-vis the application of section 12022.1 in a juvenile proceeding. Because that statute uses terminology that refers exclusively to adult criminal proceedings—e.g., information, indictment, complaint, preliminary hearing, sentencing, conviction, bail—the minor claimed it did not apply to juveniles. However, the court explained, "The approach taken by the minor . . . overlooks the plain language of another statute, Welfare and Institutions Code section 726, which provides that a juvenile ward's maximum confinement or commitment shall be a time *equal to* 'the maximum term of *imprisonment* which could be imposed upon an *adult convicted* of the [same] offense or offenses . . . .' (Italics added.) Hence, for this limited juvenile purpose, the minor's current and prior juvenile records are to be treated *as if* they were compiled in an adult context. [¶] The [Determinate Sentencing Act (DSA)] provides in detail for the enhancement of adult sentences when specified circumstances of an offense, or of the offender's record, suggest that a longer period of confinement is warranted. Welfare and Institutions Code section 726 expressly adopts this system of enhancements for purposes of computing a juvenile ward's maximum confinement or commitment. [¶] Thus, paragraph three of Welfare and Institutions Code section 726 defines a ward's maximum confinement or commitment on a single count as the upper DSA term for the offense as set forth in . . . section 1170, subdivision (a)(2), 'plus enhancements which

must be proven if pled.' The inference is that *any* enhancement which would apply to an adult conviction may likewise be applied, if pled and proven, in the juvenile setting." (*In re Jovan B., supra,* 6 Cal.4th at pp. 811-812, original italics.)

The court further explained, "Of course, juvenile proceedings do not literally result in 'convictions' and juvenile confinements are not 'sentences,' but that cannot be dispositive of the question whether the bail/O.R. [own recognizance] enhancement applies to juvenile wards. Because they were enacted in an adult context, *all* felony sentence enhancements set forth in the DSA are defined in terms of 'conviction' and 'sentence' or 'punishment' for an underlying offense. If use of this adult terminology were enough to prevent these enhancements from applying to juvenile wardship matters, paragraphs three and four of Welfare and Institutions Code section 726 would be meaningless." (*In re Jovan B., supra,* 6 Cal.4th at p. 812, original italics.)

As *Jovan* makes clear, the juvenile law, via Welfare and Institutions Code section 726, recognizes the applicability of penal statutes and enhancements that are phrased exclusively in the language of adult criminal proceedings. Indeed, the minor concedes that "Welfare and Institutions Code section 726 explicitly authorizes the application of the Determinate Sentencing Act to calculate a minor's maximum exposure to confinement." Thus, the use of adult criminal terminology in section 186.22(d) does not, in our view, make it an exception.

The purpose of Proposition 21 supports our view. The initiative "made numerous changes to the Penal Code and Welfare and Institutions Code relating to the adult and juvenile justice systems, including the treatment of juvenile offenders, the confidentiality protections afforded to juvenile proceedings, the type of juvenile offenders that can be tried in adult court, and the punishment for gang-related offenses and offenders." (*In re Melvin J.* (2000) 81 Cal.App.4th 742, 744.) The main purpose of the Act was to combat violent crime committed by juveniles and gang members. (Prop. 21, § 2.) As explained in the "FINDINGS AND DECLARATIONS" section of Proposition 21, "Criminal street

gangs and gang-related violence pose a significant threat to public safety and the health of many of our communities. Criminal street gangs have become more violent, bolder, and better organized in recent years." (Prop. 21, § 2, subd. (b).) Despite "a substantial and consistent four year decline in overall crime . . . [v]iolent juvenile crime has proven most resistant to this positive trend." (Prop. 21, § 2, subd. (c).)

In response to this problem, Proposition 21 establishes severe penalties for gang-related felonies. (Prop. 21, § 2, subd. (h).) Indeed, in the argument in favor of Proposition 21, its backers stated that it "ends the 'slap on the wrist' of current law by imposing real consequences for GANG MEMBERS, RAPISTS, AND MURDERERS who cannot be reached through prevention or education. [¶] Californians must send a clear message that violent juvenile criminals will be held accountable for their actions and that the punishment will fit the crime. YOUTH SHOULD NOT BE AN EXCUSE FOR MURDER, RAPE OR ANY VIOLENT ACT—BUT IT IS UNDER CALIFORNIA'S DANGEROUSLY LENIENT EXISTING LAW." (Ballot Pamp., Primary Elec. (Mar. 7, 2000) argument in favor of Prop. 21, p. 48.)

Given the purpose and focus of Proposition 21 and the reasoning in *Jovan*, we conclude that section 186.22(d) must be construed to apply to both adults and juveniles. Indeed, the minor's view that it was intended to punish *only adults*, and not juveniles, who commit gang related offenses is patently inconsistent the statements in the ballot pamphlet and would defeat the fundamental purpose of Proposition 21, which, as noted, is to combat juvenile and gang-related violence and crime. For this reason, we consider the minor's interpretation is unreasonable. Thus, we further reject his claim that the statute is at least ambiguous concerning whether it applies to juvenile proceedings and must, therefore, be construed in his favor. (See *People v. Franklin* (1999) 20 Cal.4th 249, 253 [where reasonably possible, ambiguous statutes construed in favor of defendant]; *People v. Alvarado, supra,* 87 Cal.App.4th at p. 186 [interpretation that frustrates purpose of statute must be avoided].)

IV. Denial of Demurrer

The minor contends that the court erred in denying his demurrer to the gang allegation. First, he claims that section 186.22(d) is not a substantive offense—i.e., the statute does not define a separate crime. Thus, the allegation that he violated it was subject to demurrer because the alleged facts did not constitute a public offense. (§ 1004, subd. 4.[5]) This claim is meritless.

The People concede that section 186.22(d) does not define a crime. Rather, it is a penalty provision. More importantly, the People correctly note that, contrary to the minor's claim, the petition did not allege that he violated section 186.22(d). It alleged that he committed a battery "punishable as a FELONY pursuant to" section 186.22(d) and that he committed the offense for the benefit of a criminal street gang.

Alternatively, the minor claims that the phrase " '[a]ny person who is convicted of a public offense, punishable as a *felony or a misdemeanor* . . .' " in section 186.22(d) means that the statute applies only when the underlying public "offense" is a wobbler.[6] (Original italics.) Again we disagree.

According to the minor, if one commits either a misdemeanor battery or a felony—e.g., murder—for the benefit of a street gang, then section 186.22(d) is inapplicable. Rather, he argues that the statute is directed at only the limited class of perpetrators who commit wobblers. However, Proposition 21, as noted, was intended to

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[5] Section 1004 provides, in pertinent part, "The defendant may demur to the accusatory pleading at any time prior to the entry of a plea, when it appears upon the face thereof either: [¶] . . . [¶] 4. That the facts stated do not constitute a public offense."

[6] "[A] wobbler is a special class of crime which could be classified and punished as a felony or misdemeanor depending upon the severity of the facts surrounding its commission." (*People v. Superior Court (Perez)* (1995) 38 Cal.App.4th 347, 360, fn. 17.)

The "wobbler" issue is currently before the California Supreme Court. (See *Robert L. v. Superior Court* (2001) 90 Cal.App.4th 1414, review granted Oct. 24, 2001, (S100359).)

the increase the punishment for gang-related offenses and change current system of leniency with which juveniles who commit such offenses are often treated. Clearly, to achieve this purpose, the Act must apply to all gang-related crimes, whether misdemeanors, wobblers, or felonies. Thus, when viewed in light of the purpose of the Act, the minor's position is unreasonable. For this reason we reject it and the minor's alternative claim that the statute is ambiguous. Rather, we understand section 186.22(d) to apply to any person who is convicted of a any public offense that is punishable as a felony or that is punishable as a misdemeanor.

The minor argues that such an interpretation will lead to harsh penalties for misdemeanor offenses. While this may be so, it does not negate applicability of the statute to all degrees of criminal offenses or establish that harsher penalties for gang-related misdemeanors is unreasonable.

In sum, we conclude that the court properly ruled on the minor's demurrer.

V. Sufficiency of the Evidence

The minor contends that there is insufficient evidence to support the court's finding that he committed felony battery for the benefit of a *criminal street gang* as defined by statute. He notes that to prove a criminal street gang, the prosecution had to establish beyond a reasonable doubt that the minor acted for the benefit of an organization of three or more people, having as one of its primary activities the commission of specified felonies, including assault with a firearm and robbery, and having a common name or common identifying symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity, which means the commission of at least two of the specified offenses. (§ 186.22, subd. (f).) The minor argues that there is insufficient evidence he belonged to an organization and, if he did, that its primary activity is the commission of specified offenses or that it engaged in a pattern of criminal gang activity. We disagree.

When considering a challenge to the sufficiency of the evidence to support a jurisdictional finding, our task is to determine whether there is substantial evidence—evidence which is reasonable, credible, and of solid value—such that the court could find beyond a reasonable doubt that the minor committed the alleged conduct. In making this determination, we review the whole record in the light most favorable to the judgment, we draw all reasonable inferences from the evidence that support it, and we presume the existence of every fact the court could reasonably deduce from the evidence. Conversely, we do not reweigh the evidence, resolve conflicts in the evidence, or reevaluate the credibility of witnesses. (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371-1372; see *Jackson v. Virginia* (1979) 443 U.S. 307, 319-320; *People v. Staten* (2000) 24 Cal.4th 434, 460; *People v. Jones* (1990) 51 Cal.3d 294, 314; *People v. Johnson* (1980) 26 Cal.3d 557, 578.)

As noted, Officer Lazzarini understood the statutory definition of *criminal street gang*. He opined that the Norteño gang is an ongoing organization of more than three people that uses various identifying symbols, signs, and tattoos, including "norte, norteno, X four, one four, the number 14, dots on tattoos one and four, dots, [and] four dots by themselves." He explained that the prison group known as the Nuestra Familia is the primary organ of the Norteño gang and that outside prison the structure is less formal, with different Norteño cliques, including the Boronda group. Based on the evidence obtained from a Norteño prisoner, Lazzarini further explained that Norteños have been moving away from the fragmented structure of numerous separate cliques and to a more unified structure under a single Norteño umbrella organization. This testimony is sufficient to support a finding that the minor belonged the Boronda clique of the Norteño organization, which qualifies as a criminal street gang.

The minor cites this court's opinion in *People v. Valdez* (1997) 58 Cal.App.4th 494 for the proposition that Norteño is a general term and not the name of a gang.

Rather, Norteños belong to separate and discrete gangs that may or may not qualify as criminal street gangs.

In *Valdez*, one issue before us was whether the court erred in permitting expert testimony concerning whether the alleged conduct was committed for the benefit of a criminal street gang. In that case, a group comprising individuals from a number of different Norteño cliques or gangs in San Jose came together one day and formed a caravan to attack Sureños. Given the expert testimony, we stated, "At the time it assembled, the caravan was not a 'criminal street gang' within the meaning of the [gang] enhancement allegation. Moreover, their common identification as Norteños did not establish them as a street gang, for, as [the expert] testified, Norteño and Sureño are not the names of gangs." (*People v. Valdez, supra,* 58 Cal.App.4th at p. 508.) We concluded that the expert testimony was admissible because it could help the jury understand that joint conduct by such a diverse group could benefit each of the gangs. (*Id*. at pp. 508-509.)

Valdez does not hold that there is no criminal street gang called the Norteño gang. Nor does it preclude reliance on Lazzarini's testimony. Moreover, the expert testimony in *Valdez* is irrelevant here in determining whether there is substantial evidence to support the gang finding.

The minor next argues that there was insufficient evidence to support a finding that the Norteño gang has as its primary activity the commission of specified offenses. We disagree.

Lazzarini received formal training concerning gangs. He has personally investigated over one hundred gang crimes, arrested over one hundred gang members, and interviewed them concerning, among other things, the types of crimes they commit. Based on his experience and review of the documentary evidence, he opined that the primary activities of the Norteño gang include homicide, robberies, rapes, drug possessions, carjackings, car theft, and witness intimidation and threats, all of which are

specified offenses. (See § 186.22, subd. (e).) He presented two examples of such crimes by Norteños: an assault with a deadly weapon and an armed robbery. This testimony plus the evidence of the current conduct was sufficient to establish the "primary activity" element. (Compare *People v. Galvan* (1998) 68 Cal.App.4th 1135 [sufficient evidence] with *In re Elodio O.* (1997) 56 Cal.App.4th 1175 [insufficient evidence], disapproved in *People v. Sengpadychith* (2001) 26 Cal.4th 316, 323.) Indeed, in *People v. Sengpadychith, supra,* 26 Cal.4th at p. 324, the California Supreme Court opined that testimony based on an experts long experience with gangs, personal investigation of hundreds of gang members and crimes committed by them, along with documentary evidence from the police department and opinion testimony that the primary activity of a gang is the commission of specified offenses would be sufficient to support a finding. Lazzarini's testimony fits this description.

Last, the minor claims there is no evidence concerning the primary activities of his gang—the Boranda gang—or that it engages in a pattern of criminal gang activity. This claim fails because it is based on a faulty premise that the Boranda group is a separate, distinct, independent criminal street gang. However, as Lazzarini's testified, the Boranda gang is merely a subgroup or clique within the Norteño gang, making the greater Norteño gang the relevant group for purposes of proving the gang allegation.

VI. Ineffective Assistance of Counsel

The minor contends that defense counsel rendered ineffective assistance because she failed to raise a hearsay objection to Lazzarini's testimony concerning the other crimes, which was introduced to establish the "pattern" element of a criminal street gang.

"To prevail on a claim of ineffective assistance of counsel, the defendant must show counsel's performance fell below a standard of reasonable competence, and that prejudice resulted. [Citations.] When a claim of ineffective assistance is made on direct appeal, and the record does not show the reason for counsel's challenged actions or omissions, the conviction must be affirmed unless there could be no satisfactory

explanation. [Citation.] Even where deficient performance appears, the conviction must be upheld unless the defendant demonstrates prejudice, i.e., that, ' " 'but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.' " ' [Citations.]" (*People v. Anderson* (2001) 25 Cal.4th 543, 569; see *Strickland v. Washington* (1984) 466 U.S. 668, 687-688; *People v. Pope* (1979) 23 Cal.3d 412, 426; *In re Elizabeth G.* (2001) 88 Cal.App.4th 496, 502-503.)

Since the record on appeal does not reveal why defense counsel failed to raise the hearsay objection and since the claim is also raised in the minor's petition for a writ of habeas corpus, which includes material not part of the record on appeal, we reject the appellate claim and deal with the issue in the context of his writ petition.

VII. Validity of the Registration Requirement

As noted, defendant challenges the registration requirement in section 186.30. This section provides, "(a) Any person described in subdivision (b) shall register with the chief of police of the city in which he or she resides, or the sheriff of the county if he or she resides in an unincorporated area, within 10 days of release from custody or within 10 days of his or her arrival in any city, county, or city and county to reside there, whichever occurs first. [¶] (b) Subdivision (a) shall apply to any person convicted in a criminal court or who has had a petition sustained in a juvenile court in this state for any of the following offenses: [¶] (1) Subdivision (a) of Section 186.22. [¶] (2) Any crime where the enhancement specified in subdivision (b) of Section 186.22 is found to be true. [¶] (3) Any crime that the court finds is *gang related* at the time of sentencing or disposition." (Italics added.)

The minor argues that the phrase "gang related" in section 186.30 fails to provide adequate notice concerning what the statute requires and fosters arbitrary law enforcement. Consequently, he claims the statute is unconstitutionally vague.

The void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient precision that "ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." (*Kolender v. Lawson* (1983) 461 U.S. 352, 357; *People v. Castenada* (2000) 23 Cal.4th 743, 751.) "The constitutional interest implicated in questions of statutory vagueness is that no person be deprived of 'life, liberty, or property without due process of law,' as assured by both the federal Constitution (U.S. Const., Amends. V, XIV) and the California Constitution (Cal. Const., art. I, § 7)." (*Williams v. Garcetti* (1993) 5 Cal.4th 561, 567.)

"To satisfy the constitutional command, a statute must meet two basic requirements: (1) The statute must be sufficiently definite to provide adequate notice of the conduct proscribed; and (2) the statute must provide sufficiently definite guidelines for the police in order to prevent arbitrary and discriminatory enforcement. [Citations.]" (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1106-1107.) However, reasonable certainty is all that is necessary. (*Ibid*.) "[A]ll that is required is that the language 'conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices . . . .' Citation.]" (*Roth v. United States* (1957) 354 U.S. 476, 491.)

To resolve a vagueness claim, we consider the challenged statutory terms in the context of the statute's purpose. (*Clark v. Community for Creative Non-Violence* (1984) 468 U.S. 288, 290-291; *Communications Assn. v. Douds* (1950) 339 U.S. 382, 412.) Even imprecise language will not automatically render a statute void if it reasonably can be construed to provide constitutionally sufficient clarity. To this end, we look to see whether the language may be given a reasonable and practical construction or its terms made reasonably certain by reference to secondary sources such as long established or commonly accepted usage, usage at common law, judicial interpretations of statutory language or of similar language, and legislative history and purpose. (*People v. Tran*

(1996) 47 Cal.App.4th 253, 259-260; *City of Los Altos v. Barnes* (1992) 3 Cal.App.4th 1193, 1202; *People v. Nguyen* (1984) 161 Cal.App.3d 687, 692.)

In reviewing the minor's challenge to the statutory phrase "gang related," we find guidance in *People v. Gardeley* (1996) 14 Cal.4th 605 and *People v. Lopez* (1998) 66 Cal.App.4th 615.

In *Gardeley*, the court concluded that proving the "pattern" element of a gang enhancement required evidence that specified offenses were committed but not that those predicate offenses were "gang related." (*People v. Gardeley, supra,* 14 Cal.4th at p. 620-622.) In reaching this conclusion, the court construed the nonstatutory phrase "gang related" to mean " 'for the benefit of, at the direction of, or in association with' " a criminal street gang. (*Id.* at p. 619.)

In *Lopez*, the defendant claimed that the word "gang" in a probation condition prohibiting various "gang" related activity was vague.[7] (*People v. Lopez, supra,* 66 Cal.App.4th at pp. 622, 629.) The court agreed that the word was uncertain in the abstract. (*Id*. at p. 631.) However, given its context and the purpose of the probation condition, the court found that *gang* could only mean groups or associations whose purpose is to commit crimes. (*Id*. at pp. 630-632.) "The contextual construction of the word 'gang' to mean a group primarily engaged in the pursuit of criminal activities tends to give it a 'constitutionally sufficient concreteness.' [Citation.] Activities of an association which deprive third parties of their lawful rights fall outside the constitutional pale. [Citation.] The commission of crimes is the most apparent manifestation of such

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[7] " 'The defendant is not to be involved in any gang activities or associate with any gang members, nor wear or possess, any item of identified gang clothing, including: any item of clothing with gang insignia, moniker, color pattern, bandanas, jewelry with any gang significance, nor shall the defendant display any gang insignia, moniker, or other markings of gang significance on his/her person or property as may be identified by Law Enforcement or the Probation Officer.' " (*People v. Lopez, supra,* 66 Cal.App.4th at p. 622.)

unprotected conduct. The performance of acts that constitute a civil nuisance is another. [Citation.]" (*Id*. at p. 632.)

The court further noted that California's gang statutes proscribe active participation crimes by a "criminal street gang" and specifically define such a gang. Because those statutes have been upheld against a variety of constitutional challenges, including claims based on the due process clause of the Fourteenth Amendment, the court found that the terms of the statute "ensure that mere membership in a criminal street gang will not be punished and that groups or associations whose primary purpose is not the commission of crime will be excluded from coverage." (*People v. Lopez, supra,* 66 Cal.App.4th at p. 633.) For this reason, the court modified the challenged probation condition to incorporate the statutory definition of a "criminal street gang." (*Id*. at p. 634.)

As in *Gardeley*, we believe that "gang related" can have a clear meaning, and we adopt the reasoning in *Lopez* to give it constitutionally sufficient clarity. Although section 186.30, subdivision (b)(3) does not employ the phrase "criminal street gang," we consider it apparent from its context and the purpose of the registration requirement that the term *gang* in the phrase refers to *a criminal street gang* as defined in section 186.22, subdivision (f). So construed, section 186.30, subdivision (b)(3) gains reasonable certainty and is not unconstitutionally vague.

The minor challenges the requirement in 186.32, subd. (a)(1)(C) (hereafter section 186.32(a)(1)(C)), that he provide "any information that may be required by the law enforcement agency."[8] He claims that this provision is unconstitutionally vague and

[8] Section 186.32 provides, in relevant part, "(a) The registration required by Section 186.30 shall consist of the following: [¶] (1) Juvenile registration shall include the following: [¶] . . . [¶] (C) A written statement signed by the juvenile, giving any information that may be required by the law enforcement agency, shall be submitted to the law enforcement agency."

overbroad. He argues, "An ordinary citizen cannot tell from the words used in the statute which information *shall* be required." (Original italics.) Moreover, the statute "does not provide the law enforcement agency guidance regarding what may be asked. The agency is allowed to ask any question it chooses. There are absolutely no defining boundaries to the types of questions to which a registrant may be subjected. Each law enforcement agency has been given sweeping authority to set its own standards and defining perimeters, without regard to constitutional restrictions." We are not persuaded.

Under the statute, registration entails an appearance at the police or sheriff's department, a written statement containing information required by the law enforcement agency, and submission of fingerprints and a photograph. In addition, any change in residence address must be reported within 10 days to the appropriate agency. (§ 186.32.) We note that " '[r]egistration requirements generally are based on the assumption that persons convicted of certain offenses are more likely to repeat the crimes and that law enforcement's ability to prevent certain crimes and its ability to apprehend certain types of criminals will be improved if these repeat offenders' whereabouts are known. [Citation.] Accordingly, the Legislature has determined that sex offenders (. . . § 290), narcotics offenders (Health & Saf. Code, § 11590) and arsonists (. . . § 457.1) are likely to repeat their offenses and therefore are subject to registration requirements.' [Citation.]" (*In re Luisa Z.* (2000) 78 Cal.App.4th 978, 982, quoting *People v. Adams* (1990) 224 Cal.App.3d 705, 710.) We further note that the registration requirement in section 186.32(a)(1)(C) is couched in language similar to registration provisions for sex offenders, narcotics offenders, and arsonists.[9]

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[9] Registration by sex offenders entails "[a] statement in writing signed by the person giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address." (§ 290, subd. (e)(2)(A).) Narcotics offenders must register by providing "a statement in writing signed by such person, giving such information as may be required by the Department of

Given our construction of "gang related," we believe that section 186.32(a)(1)(C) may reasonably be construed to require only information concerning *criminal street gangs* that is reasonably related to the purpose of the Act and its goal of protecting the public form gang-related violent crime. (See *Manduley v. Superior Court, supra*, 27 Cal.4th at pp. 573-576; Prop. 21, § 2, subd. (b).) When limited to this focused purpose, the phrase *giving any information that may be required by the law enforcement agency* reasonably means that the registrant must provide information necessary for the law enforcement agency to locate the offender, such as the person's full name, any aliases, the person's date of birth, the person's residence, the description and license plate number of any vehicle the person owns or drives, and information regarding any employment the person has. It also means descriptive or identifying information concerning the membership and whereabouts of criminal street gangs that is reasonably designed to aid agencies in preventing gang-related violence and crime. So construed, section 186.32 provides constitutionally sufficient notice to a registrant and reasonable guidance to law enforcement agencies and thus adequate protection against arbitrary and discriminatory enforcement.

Given our construction of section 186.32(a)(1)(C), we also concluded that it is not impermissibly overbroad and does not abridge the First Amendment right of association. Simply put, it does not give law enforcement agencies carte blanche authority to ask unlimited questions about anything. Rather, the statute authorizes agencies to ask, and requires the registrant to provide, only that information reasonably necessary to carry out the legitimate purposes of the Act. (See *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1112.) For the same reason, we reject the minor's claim that the statute violates his

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Justice" as well as fingerprints and a photograph. (Health & Saf. Code, § 11594.) Arsonists similarly are required to provide "a statement in writing signed by the person, giving information as may be required by the Department of Justice" along with fingerprints and a photograph." (§ 457.1, subd. (f).)

California constitutional right of privacy. (Cal. Const., art. I, § 1; see *People v. Hove* (1992) 7 Cal.App.4th 1003, 1005-1007.)

Next, we find no merit to the minor's claim that the registration requirement violates the constitutional protection against unreasonable searches and seizures, the privilege against self-incrimination, and his right to counsel. (U.S. Const., 4th, 5th, & 6th Amends.; Cal. Const., art. I, §§ 15 & 24.)

The minor cites no authority for the proposition that a registration requirement imposed after a criminal conviction or juvenile adjudication violates, or even implicates, the offender's rights under the Fourth Amendment. Understandably so. In *People v. McVickers* (1992) 4 Cal.4th 81, the defendant was convicted of certain sex offenses and, under section 1202.1 was required to submit to blood testing for AIDS. The court concluded that like DNA analysis of blood samples, deportation, hospitalization of the potentially insane, and registration as a sex offender, AIDS testing served a legitimate nonpunitive governmental purpose. The court rejected the claim that the test did not so implicate the defendant's Fourth Amendment rights as to constitute additional punishment. (*People v. McVickers, supra,* 4 Cal.4th at pp. 87-89.)

As our discussion reveals, the registration requirement is a consequence of the minor's continued wardship and release on probation and serves a legitimate, nonpunitive and compelling governmental purpose: prevention of recidivism and gang violence and crime. (See *People v. Ansell* (2001) 25 Cal.4th 868, 872-873.) We note that as a condition of probation, courts may require that minors be subject to search or seizure without grounds for suspicion as long as such conduct is not arbitrary or capricious or undertaken solely for purposes of harassment. (*In re Tyrell J.* (1994) 8 Cal.4th 68, 83, 86, 87, fn. 5.) The registration requirement is akin to a probation condition, and to the degree that it may be considered a search or seizure, it does not impermissibly infringe on the minor's Fourth Amendment rights.

Inasmuch as we have determined that the permissible scope of the inquiry by authorities under the registration requirement is limited to descriptive information about the registrant and criminal street gangs, we further conclude that it does not implicate the privilege against self-incrimination and the right to counsel. The minor is not subject to custodial interrogation or prosecution in violation of his right to remain silent or his right to counsel, nor can the challenged procedure be regarded as comparable to a preindictment investigation of a crime suspect or the initiation of an adversarial criminal proceeding where his fundamental rights may be affected. (See *Marchetti v. United States* (1968) 390 U.S. 39, 53 [self-incrimination]; *Mempa v. Rhay* (1967) 389 U.S. 128, 134 [right to counsel].)

Last, we reject the minor's claim that the registration requirement violates the constitutional prohibitions against cruel and unusual punishment. (U.S. Const., 8th Amend; Cal. Const., art. I, § 17.) Assuming that the requirement constitutes punishment (see *In re Reed* (1983) 33 Cal.3d 914 [sex offender registration requirement is punishment], disapproved in *People v. Castellanos* (1999) 21 Cal.4th 785 insofar as *Reed* suggests that registration is punishment for purposes of ex post facto analysis]), we do not find that the minor has satisfied his heavy burden to establish that the registration is cruel and unusual punishment. (See *People v. Wingo* (1975) 14 Cal.3d 169, 174.)

In *In re Reed, supra*, 33 Cal.3d 914, the court concluded that the lifetime registration requirement for sex offenders, and the stigma attached to such registration, was unconstitutional punishment for a misdemeanor involving a relatively minor, nonviolent, sexual indiscretion. (*Id*. at p. 926.)

Here, the minor committed a gang-related violent and unprovoked attack, and, as a result he is subject to a five-year registration requirement. We have considered this requirement in light of the criteria relevant in determining his constitutional challenge. (See *Solem v. Helm* (1983) 463 U.S. 277, 290-291; *In re Lynch* (1972) 8 Cal.3d 410, 425-427.) We do not find that the registration requirement as construed is "so

disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity." (*In re Lynch, supra,* 8 Cal.3d at p. 424, fn. omitted; see *People v. Dillon* (1983) 34 Cal.3d 441, 477-478; *Gregg v. Georgia* (1976) 428 U.S. 153, 173.)

VIII. Disposition

The jurisdictional and dispositional orders are affirmed.

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Wunderlich, J.

WE CONCUR:

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Premo, Acting P.J.

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Elia, J.