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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN ELEBY AND TOMMIE
MEANS,

Defendant and Appellant.

B262470

(Los Angeles County
Super. Ct. No. BA394931)

APPEAL from a judgment of the Superior Court of Los Angeles County. George G. Lomeli, Judge. Affirmed as to Kevin Eleby. Affirmed in part, reversed in part, and remanded for resentencing as to Tommie Means.

Kevin Eleby, in pro. per.; and Ava R. Stralla, under appointment by the Court of Appeal, for Defendant and Appellant Kevin Eleby.

Mark S. Givens, under appointment by the Court of Appeal, for Defendant and Appellant Tommie Means.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, and Stacy S. Schwartz, Deputy Attorney General, for Plaintiff and Respondent.

Kevin Eleby and Tommie Means¹ appeal from the judgment entered following a jury trial in which they were convicted of seven counts of second degree robbery in violation of Penal Code² section 211 (counts 9–14, 17, 21–22), and one count of false imprisonment by violence (count 8).³ The jury found true the allegations that a principal possessed and used a firearm as to each count of conviction for both Eleby and Means. (§§ 12022.53, subds. (b) & (e)(1), 12022, subd. (a)(1).) The jury found true the allegation that Eleby personally used a firearm in five counts of conviction (counts 8–11, 14), but not true as to the remaining counts (17, 21–22). (§ 12022.53, subd. (b).) The trial court sentenced Eleby to an aggregate term of 34 years 8 months, and Means to a total term of 15 years in state prison.

¹ Codefendants Keoki Williams and Daquinn Epps were tried with Eleby and Means, but are not parties to this appeal.

² Undesignated statutory references are to the Penal Code.

³ During trial the court dismissed three counts of second degree robbery and two counts of kidnapping to commit robbery. The trial court dismissed the remaining nine counts of kidnapping to commit robbery after the jury failed to reach a verdict on those counts.

Appellant Means contends his convictions based on a theory of aiding and abetting for false imprisonment by violence (§ 236) in count 8, and for second degree robbery (§ 211) in counts 9, 10, 11, and 14 lack substantial evidentiary support. We agree. Accordingly, we reverse appellant Means's convictions on counts 8, 9, 10, 11, and 14, as well as the accompanying true findings on the firearm enhancements, and remand to the trial court for resentencing.⁴

Appellant Eleby requested that this court independently examine the entire record on appeal to determine whether it reveals any issues which, if resolved favorably to appellant, would result in reversal or modification of the judgment. (*People v. Wende* (1979) 25 Cal.3d 436.) Based on a thorough examination of the record and further briefing from the parties, we have determined that Eleby's convictions for false imprisonment by violence (§ 236) in count 8 and for second degree robbery (§ 211) in counts 10, 11, and 14, as well as the accompanying true findings on the firearm enhancements, find substantial support in the record. We therefore affirm the judgment as to appellant Eleby.

⁴ The parties agree that the trial court incorrectly calculated the actual number of days appellant Means spent in custody prior to sentencing. Upon resentencing, appellant Means should receive a total of 1,305 days of presentence custody credit.

FACTUAL BACKGROUND

The November 23, 2011 Robbery of Radio Shack in Los Angeles (Counts 8-11, 14)

Agustin Sandoval was the manager of a Radio Shack store in Los Angeles (Radio Shack, L.A.) on November 23, 2011. Sandoval and employees Daniel Banuelos, Juan Gomez, Jassi Toney, Denia Green, and David Hernandez were working that night to prepare for the upcoming Black Friday sale. As Sandoval was heading toward the exit at the back of the store to get a coffee, Eleby entered the front of the store wielding a black handgun. Eleby, who was wearing a hoodie and a black baseball cap with the letter “A” on it, was soon joined by two other men. One of the men, codefendant Keoki Williams, wore a long black trench coat, black wig, and a designer backpack.

Banuelos saw one of the men point a gun at Toney. The perpetrators quickly rounded up Sandoval, Banuelos, and the other store employees, as well as four or five customers, and moved them to a back room where they ordered the victims to lie face-down on the floor with their hands behind their backs. One of the men bound the victims’ hands and feet with white plastic zip ties. As the perpetrators searched for keys to open the cages containing smartphones and other high-end electronics, they removed two cell phones from Sandoval’s pockets and one from Banuelos’s pocket.

The men opened the cages and emptied them of merchandise valued at approximately \$100,000, loading the items into “really big bags.” Before leaving the store, the perpetrators turned off the lights, disconnected the phone lines, and locked the back room.

The January 13, 2012 Robbery of AT&T Affordable Portables in Gardena (Counts 21, 22)

Ernesto Gomez was the manager and Jalysa Harris the assistant manager of AT&T Affordable Portables in Gardena on January 13, 2012. That evening, about 7:45 p.m., Eleby and another man entered the store. Eleby, whom Harris described as short, stocky, and dark-skinned, wore a red and blue plaid shirt and a baseball cap with the letter “P” on it. Eleby had a black or silver handgun and was carrying a black duffel bag. The other man was wearing something tan, possibly a plaid shirt, and carried a designer backpack.

Eleby pointed the gun at Harris and ordered her to “get down.” She promptly crouched down with her hands up. The two men then took Harris and Gomez to the back room and ordered them to open the store safes, which contained iPhones, other smartphones, iPads, and SIM cards. Harris complied. The men ordered Gomez and Harris to lie face down on the floor, and Eleby bound their hands with zip ties as he held his gun to their backs. The men then removed the merchandise from the safes, filling the brown designer backpack and black duffel bag they had brought with them. The men took about \$900 from the cash register and left the store.

Gomez noticed that a small red crossover SUV, possibly a Ford Explorer or Expedition, which he had observed parked in front of the store just prior to the robbery, was gone after the robbery.

The January 18, 2012 Robbery of Radio Shack in Culver City (Count 17)

Lisa Fabrizio, the manager of the Radio Shack store on Sepulveda Boulevard in Culver City (Culver City Radio Shack),

was working alone the morning of January 18, 2012. Approximately 10:20 a.m. Eleby and another man entered the store. One of the men wore a green plaid shirt, the other a brown plaid shirt, and they both wore gray baseball caps, one with the letter "P." The taller of the two men lifted his shirt to reveal the brown grip of a handgun in his waistband as the other man came around the counter and pulled Fabrizio away from the register. They demanded that Fabrizio take them to the area where the cell phones were stored. Fabrizio led the men to the back room and opened the cabinet containing the high-end, expensive cell phones. One of the men had a brown leather backpack with designer logos on it. As he put on a pair of gloves, the other man took Fabrizio to the bathroom where he bound her hands behind her back with zip ties. Instructing Fabrizio to stay there on the floor, he turned off the bathroom lights and left.

During the incident, Yonatan Yihdego came into the store to make a purchase. A man wearing a dark, long-sleeved hoodie with the hood over his head approached Yihdego from the back of the store. Suddenly, the man pulled a gun, and pointing it at Yihdego's face, ordered him to turn around and put his hands behind his back. The man pushed Yihdego to the back of the store and into the bathroom where Fabrizio was sitting on the floor with her hands tied behind her back. The man ordered Yihdego to his knees, bound Yihdego's hands behind his back with zip ties, turned off the light, and left.

The men took money from the cash register and went out through a back door to the alley behind the store, setting off the door alarm.

A surveillance video of the alley from the tire store south of the Radio Shack showed a silver GMC Acadia back up to the rear

of the Radio Shack at 11:49 a.m. The vehicle pulled away at 11:56 a.m.

Cell Phone Records

On January 13, 2012, a half hour before the robbery of the AT&T Affordable Portables store, a 31-minute call originated from Epps's mobile phone to Williams's phone. Both phones accessed cell towers within a few blocks of the store. Earlier in the day on January 13, 2012, Eleby's phone also accessed cell towers near the store, and around the time of the robbery Eleby's phone pinged the same tower Williams's phone had accessed. During the two hours before and the three hours after the Affordable Portables store robbery, Means's mobile phone accessed the cell tower close to one of his residence addresses, which was 50 blocks or six to seven miles from the store. Over the course of the entire day, Means's phone exchanged a total of 15 calls with Williams's phone.

On January 18, 2012, both Eleby's and Williams's phones accessed the cell tower near the Culver City Radio Shack around the time of the robbery. At 10:18 a.m., Epps's phone pinged a cell tower two blocks from the Culver City Radio Shack when a 30-minute call was placed from Epps's phone to Williams's phone. Between 10:34 a.m. and 10:57 a.m. on January 18, Means's phone made or received seven calls through a cell tower located at 917 West Hyde Park Boulevard in Inglewood, four to six miles from the Culver City Radio Shack. Over the course of the entire day, Means's and Williams's phones exchanged a total of 19 calls.

About two hours after the Culver City Radio Shack robbery, both Means's and Eleby's phones accessed the cell tower across the street from Bob's Digital Wireless, a cell phone store operated by Senathiraga Shanmugarajah.

No evidence was presented at trial regarding any cell phone calls at or around the November 23, 2011 Radio Shack, L.A. robbery, nor was there any evidence regarding any cell phone records prior to January, 2012.

The Investigation and Events Following the Robberies

On January 18, 2012, Shanmugarajah purchased 22 cell phones from Means for \$1,850. Police seized approximately 30 cell phones from Shanmugarajah's store on January 20, 2012. Serial numbers from four of those phones matched four of the phones taken in the Culver City Radio Shack robbery.

Surveillance video from Bob's Digital Wireless from January 18, 2012, showed a white Infiniti pull into the parking lot, followed by a silver GMC Acadia. The two vehicles parked, and several people exited. One of the men wore a plaid shirt and dark jeans. Interior surveillance footage showed a male subject walk into the store carrying a large, dark-colored duffel bag. Both vehicles pulled out of the parking lot at approximately the same time.

Police observed a silver GMC Acadia parked on the street directly in front of the apartment building where Means lived with his girlfriend on 99th Place in Westchester on January 18, 2012. Means had rented a bronze Kia Borrego from Enterprise Rent-A-Car on January 12, 2012, which he exchanged for a silver GMC Acadia on January 14, 2012. Means's fingerprints were found in the rear interior of the Acadia, and a palm print found on the exterior of the front driver's window frame matched Eleby.

In a search of Means's apartment conducted on January 19, 2012, police recovered a tan Gucci backpack with a brown pattern, a loaded 9-millimeter black handgun, two sets of black rubber gloves, and zip ties similar to the type of flexible

handcuffs used by law enforcement. Inside the backpack police found a brown plaid long-sleeved shirt and two gray baseball hats, one bearing the letter “P” and the other with the letter “B.” DNA tests were performed on the two hats, four black gloves, and the plaid shirt from Means’s apartment, and on some of the zip ties used in the robberies. The DNA profile from the hat with the letter “B” and one of the gloves matched the DNA profile obtained from Eleby, while Means and Williams were excluded as possible contributors. The DNA profile of the sample collected from one of the zip ties used in the January 13, 2012 robbery matched the profile from Williams, but Eleby and Means were excluded as possible contributors.

Means was arrested on January 20, 2012, driving a white Infiniti matching the one in the video from Shanmugarajah’s store. A search of the vehicle turned up a driver’s license and check card both in Means’s name, a large black duffel bag, an AT&T Wireless bag, a single blue glove, a cell phone, an Affordable Portables business card, and other personal items.

DISCUSSION

Appellant Means contends there is insufficient evidence of his participation in the November 23, 2011 Radio Shack, L.A. robbery—either as a direct participant or an aider and abettor—to sustain his convictions on any of the charges arising out of that robbery. Appellant Eleby also raises a substantial evidence challenge to his convictions on several counts arising out of that robbery as to which there was no testimony from the victims.

In assessing these claims, “ ‘we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable

trier of fact could find the defendant guilty beyond a reasonable doubt.’” (*People v. Avila* (2009) 46 Cal.4th 680, 701; *People v. Watkins* (2012) 55 Cal.4th 999, 1019–1020.)

We draw all reasonable inferences in favor of the verdict and presume the existence of every fact the jury could reasonably deduce from the evidence that supports its findings. (*People v. Maciel* (2013) 57 Cal.4th 482, 515; *People v. Kraft* (2000) 23 Cal.4th 978, 1053.) We do not, however, limit our review to the evidence favorable to respondent. (*People v. Dominguez* (2006) 39 Cal.4th 1141, 1153; *People v. Johnson* (1980) 26 Cal.3d 557, 577.) Furthermore, the appellate court may not “‘go beyond inference and into the realm of speculation in order to find support for a judgment. A finding . . . which is merely the product of conjecture and surmise may not be affirmed.’” (*People v. Memro* (1985) 38 Cal.3d 658, 695, overruled on other grounds by *People v. Gaines* (2009) 46 Cal.4th 172, 181, fn. 2; *People v. Marshall* (1997) 15 Cal.4th 1, 35.) “[E]vidence which merely raises a strong suspicion of the defendant’s guilt is not sufficient to support a conviction. Suspicion is not evidence; it merely raises a possibility, and this is not a sufficient basis for an inference of fact.’” (*People v. Thompson* (1980) 27 Cal.3d 303, 324.) Indeed, “[a] trier of fact may rely on inferences to support a conviction only if those inferences are ‘of such substantiality that a reasonable trier of fact could determine beyond a reasonable doubt’ that the inferred facts are true. (*People v. Raley* (1992) 2 Cal.4th 870, 890–891.)” (*People v. Rios* (2013) 222 Cal.App.4th 542, 564.)

“‘The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence. [Citation.] “‘Although it is the duty of the jury to acquit a defendant if it

finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the jury, not the appellate court[,] which must be convinced of the defendant's guilt beyond a reasonable doubt. " 'If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment.' " " " " " " (*People v. Harris* (2013) 57 Cal.4th 804, 849–850.) Further, "the testimony of a single witness is sufficient for the proof of any fact" (*People v. Richardson* (2008) 43 Cal.4th 959, 1030–1031), and to "uphold a judgment 'even if it is contradicted by other evidence, inconsistent or false as to other portions.'" (*In re Frederick G.* (1979) 96 Cal.App.3d 353, 366.)" (*People v. White* (2014) 230 Cal.App.4th 305, 319, fn. 14.)

**I. Substantial Evidence Does Not Support
Appellant Means's Convictions on Counts 8, 9,
10, 11, and 14 Arising Out of the November 23
Radio Shack, L.A. Robbery**

Acknowledging that Means was not physically present at the Radio Shack, L.A. robbery on November 23, 2011, the prosecution proceeded on an aiding and abetting theory, based on evidence connecting him to the January 13 and 18 robberies as well as his possession of a Gucci backpack, a black handgun, and zip ties.

" 'A person aids and abets the commission of a crime when he or she, (i) with knowledge of the unlawful purpose of the perpetrator, (ii) and with the intent or purpose of committing, facilitating or encouraging commission of the crime, (iii) by act or advice, aids, promotes, encourages or instigates the commission

of the crime.’ ” (*People v. Hill* (1998) 17 Cal.4th 800, 851, quoting *People v. Cooper* (1991) 53 Cal.3d 1158, 1164.) “Thus, a person who aids and abets a crime is guilty of that crime even if someone else committed some or all of the criminal acts.” (*People v. McCoy* (2001) 25 Cal.4th 1111, 1117.) The aider and abettor’s guilt is premised on the direct perpetrator’s acts together with “the aider and abettor’s *own* acts and *own* mental state.” (*Ibid.*) Our Supreme Court has “defined the required mental states and acts for aiding and abetting as: ‘(a) the direct perpetrator’s actus reus—a crime committed by the direct perpetrator, (b) the aider and abettor’s mens rea—knowledge of the direct perpetrator’s unlawful intent and an intent to assist in achieving those unlawful ends, and (c) the aider and abettor’s actus reus—conduct by the aider and abettor that in fact assists the achievement of the crime.’ ” (*People v. Thompson* (2010) 49 Cal.4th 79, 116–117; *People v. Maciel, supra*, 57 Cal.4th at p. 518.)

Respondent all but admits the lack of any evidence connecting Means to the Radio Shack, L.A. robbery, but nevertheless contends “the evidence as a whole reasonably justified the jury’s findings.” We disagree and find the evidence presented in this case wholly insufficient to support Means’s culpability as an aider and abettor in the November 23, 2011 Radio Shack, L.A robbery.

The Attorney General first cites the “numerous similarities” among the three robberies as evidence connecting Means to the November 23, 2011 robbery: In each incident, Eleby and one or two cohorts entered a mobile phone/electronics retailer with a gun, herded all employees and customers to a back room where the perpetrators bound the victims’ hands with zip

ties, and then helped themselves to cash and high-end cell phones and electronics which they loaded into various bags, including a designer backpack. But Means was indisputably not present during any of the robberies, and the modus operandi common to all three robberies did not constitute evidence that Means had knowledge of the codefendants' plan to rob the Radio Shack on November 23, 2011, intended to facilitate that robbery, or did anything to assist them in the commission of the crime.

Similarly, Means's possession of the Gucci backpack and a gun⁵ as well as zip ties similar to those used in all three robberies *after* the commission of the third robbery does not support an inference that Means had the requisite mens rea before or during the first robbery, or engaged in any conduct that in fact assisted the commission of that robbery. (See *People v. Maciel*, *supra*, 57 Cal.4th at p. 518; *People v. Thompson*, *supra*, 49 Cal.4th at pp. 116–117.)

Finally, respondent argues Means's connection to the November 23 Radio Shack, L.A. robbery by citing evidence of Means's complicity in the January 13 and January 18 robberies. The Attorney General thus claims that Means's cell phone communications with his codefendants around the time of the two January robberies, his phone's access of a cell tower near the Culver City Radio Shack within an hour of that robbery, the fact

⁵ No witness from the Radio Shack, L.A. robbery identified the black handgun found in Means's possession as the gun used in that robbery. Moreover, one of the victims of the January 13 Affordable Portables robbery testified that one of the perpetrators carried a silver handgun, and the victim in the Culver City Radio Shack robbery stated that the only part of the gun she saw—the grip—was brown.

that Means rented the GMC Acadia used in the third robbery, and his possession of four cell phones stolen in that robbery somehow establish Means's knowledge, intent and conduct in connection with a robbery which occurred nearly two months earlier.

“ ‘[A]n aider and abettor will “share” the perpetrator’s specific intent when he or she knows the full extent of the perpetrator’s criminal purpose and gives aid or encouragement with the intent or purpose of facilitating the perpetrator’s commission of the crime.’ (*People v. Beeman* (1984) 35 Cal.3d 547, 560.)” (*People v. Maciel, supra*, 57 Cal.4th at p. 518.) The fundamental flaw in the Attorney General’s argument here is that none of the evidence connecting Means to the January 13 and January 18 robberies fills the gaps left by the sheer dearth of evidence that Means communicated with his codefendants within a month of the November 23, 2011 robbery, had any knowledge or intent to facilitate that robbery, or engaged in any conduct which in fact assisted his codefendants in committing the Radio Shack, L.A. robbery. Indeed, not a shred of evidence was presented that Means even had any association with any of the codefendants before January 1, 2012, much less in November 2011.

Because the record contains no substantial evidence that Means had any knowledge of the November 23, 2011 robbery, that Means shared the perpetrators’ specific intent to commit that robbery, or that Means acted to facilitate that robbery in any way, we conclude that Means’s convictions on counts 8, 9, 10, 11, and 14 must be reversed.

II. Substantial Evidence Supports Appellant Eleby's Convictions on Counts 8, 10, 11, and 14

Eleby contends the evidence does not support his convictions arising from the Radio Shack, L.A. robbery in counts 8, 10, 11, and 14. Specifically, Eleby argues that because none of the victims in these counts testified at trial, there was no evidence to prove the element of force or fear as to the robbery charges, or the element of violence or menace required to prove the charge of false imprisonment. However, the testimony of every victim was not necessary to establish these elements in light of substantial evidence that Eleby entered the Radio Shack that night wielding a gun with which he threatened harm and instilled fear in all the victims during the commission of the robbery and false imprisonment. We therefore reject appellant Eleby's substantial evidence challenge to his convictions arising from the November 23 Radio Shack, L.A. robbery.

The felony of false imprisonment by violence requires proof that the defendant "intentionally and unlawfully restrained, confined, or detained another person" without that person's consent, and "[t]he restraint, confinement or detention was accomplished by violence or menace." (CALJIC No. 9.60) "Violence" is defined as "the exercise of physical force used to restrain over and above the force reasonably necessary to effect the restraint," while "menace" is defined as "a threat of harm express or implied by word or act." (CALJIC No. 9.60; *People v. Newman* (2015) 238 Cal.App.4th 103, 109.)

"An express threat or use of a deadly weapon is not necessary" to establish the element of menace. (*People v. Wardell* (2008) 162 Cal.App.4th 1484, 1491.) Rather, where the evidence supports a finding that the defendant's acts or words expressly or

impliedly threatened harm, the evidence is sufficient to support a conviction for false imprisonment by violence based on menace. (*Ibid.*)

Here, there is no dispute that Hernandez was one of the employees present in the Radio Shack, L.A. the night Eleby and his cohorts robbed the store. The evidence showed that Eleby walked into the store brandishing a handgun which he used to force Hernandez and others to a back room where their hands and feet were bound. Eleby's use of a gun in this manner constituted a clear threat of harm to Hernandez (and others) if he resisted being sequestered in the back room of the store during the robbery, leaving no doubt that substantial evidence supports Eleby's conviction on count 8 for false imprisonment by violence.

For the same reason, we reject Eleby's claim that the evidence was insufficient to establish the force or fear element of robbery as to counts 10, 11, and 14.

“ ‘Robbery is the taking of “personal property in the possession of another against the will and from the person or immediate presence of that person accomplished by means of force or fear and with the specific intent permanently to deprive such person of such property.” ’ ” (*People v. Clark* (2011) 52 Cal.4th 856, 943.) As our Supreme Court has observed, “ ‘the central element of the crime of robbery [is] the force or fear applied to the individual victim in order to deprive him of his property.’ ” (*People v. Gomez* (2008) 43 Cal.4th 249, 265.)

“ ‘The element of fear for purposes of robbery is satisfied when there is sufficient fear to cause the victim to comply with the unlawful demand for his property.’ ” (*People v. Morehead* (2011) 191 Cal.App.4th 765, 774; *People v. Davison* (1995) 32 Cal.App.4th 206, 212.) Explicit testimony by the victim is not

required to establish fear. (*People v. Bordelon* (2008) 162 Cal.App.4th 1311, 1319; *People v. Cuevas* (2001) 89 Cal.App.4th 689, 698.) Instead, fear may be inferred from the circumstances under which the property was taken. (*Morehead*, at p. 775; *People v. Holt* (1997) 15 Cal.4th 619, 690.) Fear may also be established in the absence of an express threat: “An unlawful demand can convey an implied threat of harm for failure to comply, thus supporting an inference of the requisite fear.” (*Morehead*, *supra*, 191 Cal.App.4th at p. 775; *People v. Brew* (1991) 2 Cal.App.4th 99, 104.) Indeed, evidence of “ ‘conduct, words, or circumstances reasonably calculated to produce fear’ ” is sufficient to establish the element. (*Brew*, at p. 104; *Morehead*, at p. 775; *People v. Bordelon*, *supra*, 162 Cal.App.4th at p. 1319.)

The record in this case contains abundant evidence from which the jury could infer the requisite fear on the part of the victims of the Radio Shack, L.A. robbery. Uncontradicted testimony established the presence at the store of the three named victims in counts 10, 11, and 14. The evidence showed that Eleby entered the store wielding a gun, which he pointed directly at one of the victims. Eleby and his accomplices ordered all of the store employees and customers to the ground and warned them not to move. The perpetrators then forced the entire group to a back room at gunpoint and bound their hands and feet with zip ties. After restraining the victims, Eleby and his accomplices loaded cell phones and other high-end store merchandise into bags and left the store.

On the strength of this evidence, the jury could reasonably infer that each of the named victims experienced fear as a result of Eleby’s conduct and the circumstances of this robbery which were calculated to produce fear and force compliance from each of

the victims. We therefore find substantial evidence in support of the judgment and reject Eleby's challenge to his convictions for robbery in counts 10, 11, and 14.

DISPOSITION

The judgment is affirmed as to appellant Eleby.

The judgment is reversed as to appellant Means's convictions on counts 8, 9, 10, 11, and 14, as well as the accompanying true findings on the firearm enhancements. The cause is remanded to the trial court for resentencing. In all other respects, the judgment as to appellant Means is affirmed.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

CHANNEY, J.