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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SIX

THE PEOPLE, Plaintiff and Respondent, v. WILLIAM DEAUNTAE SHEHEE, Defendant and Appellant.	2d Crim. No. B285739 (Super. Ct. No. 2016042510) (Ventura County)

A jury convicted William Deauntae Shehee of carjacking (Pen. Code, § 215, subd. (a),[1] count 1); second degree robbery (§ 211, count 2); assault with force likely to produce great bodily injury (§ 245, subd. (a)(4), count 3); and street terrorism (§ 186.22, subd. (a), count 4). The jury also found true gang enhancement allegations as to counts 1 through 3. (§ 186.22, subd. (b)(4)(B).)

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

The trial court sentenced Shehee to a term of 15 years to life on count 1; a concurrent term of three years plus 10 years for the gang enhancement on count 2; a term of three years plus five years for the gang enhancement on count 3, stayed pursuant to section 654; and a term of two years on count 4, stayed pursuant to section 654. We affirm.

FACTS

In April 2016, Jose Mena-Loria worked at a McDonald's restaurant in Thousand Oaks with Amber D. Mena-Loria agreed to drive Amber and her sister Amanda to Bakersfield to see their father. Mena-Loria met the sisters at a park at about 6:30 p.m. The sisters entered his car, a 2013 Nissan. Mena-Loria had $1,000 in his wallet and another $1,000 in his clothes in the back seat of his car. He also had a cell phone and a computer in his car.

The first thing that Amber asked Mena-Loria on getting into his car is whether he had any money. He thought the question strange. The sisters told him they had to use the bathroom and directed him to a CVS Pharmacy in Ventura. Mena-Loria parked in front of the pharmacy. Amanda asked him to move because there were many cameras there. He asked why it mattered. She was only going to use the bathroom. She did not answer, but directed him to the rear of the store where she said there was another bathroom.

Mena-Loria did not see a bathroom at the rear of the store. There was no one around. He asked the sisters whether they were going to do something to him. They said no. Mena-Loria parked his car where the sisters told him to park, but he kept the motor running because he was frightened.

Amanda got out of the car and walked to the rear. Mena-Loria could see her in the rear-view mirror talking to Shehee. The conversation was brief. Mena-Loria lost sight of Shehee.

Suddenly, Shehee appeared at the open driver's side window and began hitting Mena-Loria. The beating resulted in Mena-Loria losing his hearing in his left ear. Amber got out of the front seat and a Black male got in. The man, later identified as David Smith, placed his arm around Mena-Loria's neck and began hitting him in the face. Amber, who was watching the beating, told Smith to stab Mena-Loria and take his wallet. Hearing this, Mena-Loria surrendered his wallet to Smith.

Smith was attempting to get something out of his pocket. Mena-Loria stepped on the accelerator hard and the car moved in reverse. The sudden movement of the car caused Smith to lose his balance. Mena-Loria used the opportunity to get out of the car, but he fell down as he got out. Shehee came up and kicked Mena-Lorie in the ribs three times, breaking a rib.

Mena-Loria managed to get to his feet. Both men joined in attacking him. Mena-Loria defended himself, backing away until he reached the front parking lot and entered a restaurant. He asked for help at the restaurant, and someone called the police.

John Saenz was at the back of the pharmacy putting sports equipment in a storage shed. He saw two young women in a gray sedan. One of the women was talking on a cell phone telling someone to "fuck him up."

A maroon sedan drove up with two Black males. The woman went over to the car and the men got out. The woman said "he's over there" and pointed to Mena-Loria's car. One man stayed with the maroon sedan. The other man went over to Mena-Loria's car and jumped into his car. Mena-Loria panicked

and drove backwards into a fence. The man in the car started punching Mena-Loria. Mena-Loria got out of the car and the man followed him down the alley, continuing the assault. Eventually Mena-Loria was able to run away.

Both male assailants told Saenz that "the girl was 17 and [Mena-Loria] tried to rape her." Saenz told the police that the men were trying to excuse their conduct. The interactions between the two men and the two young women led Saenz to conclude they were working together. One of the women drove off in Mena-Loria's car. The other woman and the two men left in the maroon car.

When the police arrived, they went with Mena-Loria into the alley. Mena-Loria's car was not there. He had not given anyone permission to take his car, cell phone, or wallet. Mena-Loria's eyes were black and swollen partially shut.

Mena-Loria obtained a photograph from Facebook showing Amber with Shehee and Smith. Mena-Loria identified the three people in the photograph to the police as those involved in the carjacking and robbery.

Gang Evidence

Shehee admitted to Detective Gilbert Pusen that he is a member of the Ventura Avenue Crips. He has tattoos that read "Avenue Baby." Shehee discussed the history of the gang with Pusen.

Smith admitted to Officer Anthony Avila that he is associated with the Ventura Avenue Crips. He has "Crip" tattooed on his lower back and chest.

Detective Trenner Marchetti testified as a gang expert. He said the Ventura Avenue Crips has approximately 20 members and is associated with the Los Angeles Crips. The primary

activities of the Ventura Avenue Crips gang are listed in section 186.22, subdivision (e).

Marchetti testified to predicate offenses committed by four members of the gang, including Albert Warren, Shehee's uncle. Shehee's social media postings include a tribute to Warren, a photograph of a well-known Crips' member and communications with another Ventura Avenue Crips' gang member. When Shehee was arrested, he shouted "A's up," a slogan of the gang.

Given a hypothetical based on the facts of the case, Marchetti testified that the crimes were committed in association with and for the benefit of the Ventura Avenue Crips.

DISCUSSION

I

Shehee contends the uncharged conspiracy instruction was misleading.

The trial court instructed the jury with a modified version of CALCRIM No. 416 in part as follows:

"The People have presented evidence of a conspiracy. A member of a conspiracy is criminally responsible for the acts or statements of any other member of the conspiracy done to help accomplish the goal of the conspiracy.

"To prove that the defendant was a member of a conspiracy in this case, the People must prove that:

"1. The defendant intended to agree and did agree with one or more of the other co-conspirators, [Daniel] Smith, Amanda [D.], and Amber [D.], to commit the crimes of carjacking, robbery, assault by means of force likely to produce great bodily injury, or street terrorism;

"2. At the time of the agreement, the defendant and one or more of the other alleged members of the conspiracy intended

that one or more of them would commit any one or all of those crimes listed above;

"3. One of the named co-conspirators or all of them committed at least one of the following overt acts to accomplish: carjacking, robbery, assault by means of force likely to produce great bodily injury, or street terrorism."

The instruction listed nine possible overt acts.

Shehee argues the trial court should have supplemented CALCRIM No. 416 with CALCRIM No. 417 on the natural and probable consequences doctrine.

Shehee points out that Saenz testified that one of the men stayed by the maroon car. He posits the jury might have found he only acted as a lookout and that he only intended the assault. Shehee claims the jury could read CALCRIM No. 416 to mean that if he conspired to commit the assault, he also would be guilty of all other crimes committed by the conspirators. He believes that in order to support a finding of guilty on the charges other than assault, the trial court was required to give sua sponte CALCRIM No. 417 on the natural and probable consequences doctrine.

But the prosecutor did not rely on the natural and probable consequences doctrine. The prosecutor's theory was that each of the charged offenses was done to accomplish the goal of the conspiracy. CALCRIM No. 416 correctly states that a member of a conspiracy is liable for acts of another member "done to help accomplish the goal of the conspiracy." Thus, under the instruction, had the jury found the only goal of the conspiracy was to assault Mena-Loria, and Shehee only participated as a lookout, it would have found Shehee not guilty of robbery and carjacking. That the jury found Shehee guilty as charged shows

it found that all the charged offenses were done to accomplish the goal of the conspiracy.

The natural and probable consequences doctrine expands the criminal liability of a member of the conspiracy from acts done to accomplish the goal of the conspiracy to any act that is a reasonably foreseeable consequence of the conspiracy. Thus, in *People v. Zielesch* (2009) 179 Cal.App.4th 731, 741, the defendant bailed a friend out of jail. In return, the friend agreed to kill the boyfriend of the defendant's estranged wife. The defendant provided his friend with a gun and $400 to buy methamphetamine. On the way to kill the intended victim, the friend was stopped for a traffic violation. The friend shot and killed the officer. The Court of Appeal upheld the defendant's murder conviction under the natural and probable consequences doctrine, even though the shooting of the officer was not in furtherance of the goals of the conspiracy.

Here, not only was an instruction on the reasonable and probable consequences doctrine unnecessary, but the refusal to give an instruction that expands the basis for the defendant's criminal liability cannot possibly be prejudicial to the defendant.

Moreover, Shehee waived the issue. Shehee represented himself at trial. He did not request that the trial court give CALCRIM No. 417 or object when the prosecutor asked the trial court not to give it. CALCRIM No. 416 is a correct statement of the law. By failing to request clarification or amplification of the instruction in the trial court, Shehee has waived the issue on appeal. (*People v. Bolin* (1998) 18 Cal.4th 297, 328.)

II

Shehee contends the criminal street gang enhancements imposed on counts 1 through 3 are not supported by substantial evidence.

In reviewing the sufficiency of the evidence, we view the evidence in a light most favorable to the judgment. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) We discard evidence that does not support the judgment as having been rejected by the trier of fact for lack of sufficient verity. (*People v. Ryan* (1999) 76 Cal.App.4th 1304, 1316.) We have no power on appeal to reweigh the evidence or judge the credibility of witnesses. (*People v. Stewart* (2000) 77 Cal.App.4th 785, 790.) We must affirm if we determine that any rational trier of fact could find the elements of the crime or enhancement beyond a reasonable doubt. (*Johnson*, at p. 578.)

Section 186.22, subdivision (b)(1) has two prongs. The first prong requires proof that the defendant committed the charged offense "for the benefit of, at the direction of, or in association with any criminal street gang." Shehee argued there is no substantial evidence to support such a finding.

But there is substantial evidence that both Shehee and Smith were members of the same criminal street gang. They committed the crimes in concert. That is sufficient to show the crimes were committed "in association with" a criminal street gang. The jury was not required to believe that the men committed the crimes in revenge for Mena-Loria's alleged attempted rape of a 17-year-old girl.

The second prong requires proof that the defendant committed the gang-related felony "with the specific intent to promote, further, or assist in any criminal conduct by gang

members." (§ 186.22, subd. (b)(1).) Shehee does not challenge the lack of substantial evidence to support the second prong. It is obvious each gang member had the specific intent to assist the other.

III

Shehee contends the street terrorism count is not supported by substantial evidence.

Section 186.22, subdivision (a) provides: "Any person who actively participates in any criminal street gang with knowledge that its members engage in, or have engaged in, a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years."

The street terrorism offense has three elements: "First, active participation in a criminal street gang, in the sense of participation that is more than nominal or passive; second, knowledge that the gang's members engage in or have engaged in a pattern of criminal gang activity; and third, the willful promotion, furtherance, or assistance in any felonious criminal conduct by members of that gang." (*People v. Rodriguez* (2012) 55 Cal.4th 1125, 1130.)

There is substantial evidence that Shehee actively participated in a criminal street gang. Shehee has gang tattoos; his social media accounts contain gang-related material; an officer who interviewed him testified that he is very proud to be a member of the Ventura Avenue Crips; and he shouted a gang slogan when he was arrested.

There is also substantial evidence that Shehee has knowledge that his gang's members engage in a pattern of criminal gang activities. Shehee is an active member of the gang; he gave the officer who interviewed him a "brief history about the gang"; and he has an uncle with a criminal conviction who is a member of the gang.

Shehee does not contest that there is substantial evidence to support the third element: willful assistance in felonious criminal conduct by members of the gang. The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Nancy L. Ayers, Judge

Superior Court County of Ventura

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