Filed 5/25/17 P. v. Campos CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JOEL CAMPOS, Defendant and Appellant.	B264148 (Los Angeles County Super. Ct. No. TA134943)

APPEAL from a judgment of the Superior Court of Los Angeles County, Sean D. Coen, Judge. Affirmed.

Jared G. Coleman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Stacy S. Schwartz and David A. Voet, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Joel Campos appeals from the judgment entered following his conviction by jury for second degree robbery, with firearm use and a finding he committed the offense for the benefit of, at the direction of, or in association with a criminal street gang. (Pen. Code, §§ 211, 12022.53, subd. (b), 186.22, subd. (b)(1)(C).)[1] We affirm.

FACTUAL SUMMARY

1. The Present Offenses.

Viewed in accordance with the usual rules on appeal (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), the evidence established that about 10:00 p.m. on September 3, 2014, Juan Melo, coming home from work, exited a Metrorail train at the 103rd Street Station. Melo was walking home on 103rd near Grape when appellant approached him.

Appellant, wearing a purple shirt, asked Melo, "Where you from?" Melo understood the question as asking for his gang affiliation. Melo replied he was from "[n]owhere" and was working. He also said he was too old to be in a gang. Melo testified he thought appellant said appellant was from "Grape Street" or "Grape," but Melo was not certain of this. Appellant asked why Melo was wearing a red shirt. Melo replied it was part of his work uniform. Melo also testified that when appellant asked, "Where you were from? Why are you wearing that red shirt," appellant said, "I'm from – this is Grape Street."

---

[1] Subsequent section references are to the Penal Code.

Shortly after Melo explained about his uniform, appellant, using a gun, robbed Melo of several hundred dollars near 103rd and Hickory. Melo also surrendered his cell phone. After Melo asked appellant to return the phone, appellant did so but warned Melo not to call the police or appellant would shoot him.[2]

Melo walked away, dialed 911, and put his cell phone in his pocket. Melo told the 911 operator that he had been robbed, and Melo described the robber, including his shirt. Melo told the operator, " 'It looks like he might have been, like, I don't really know, from Grape Street because he got the purple shirt." Melo also told the operator, "he looks like Grape Street, the Mexican Grape Street."[3] Appellant yelled at Melo to return. Melo fled with appellant in pursuit. Appellant eventually stopped chasing Melo.

Melo stopped at 103rd and Juniper and, about three to five minutes later, police arrived and he told them what happened. Melo informed an officer that appellant told him "about being in

---

[2] During cross-examination, appellant's counsel asked Melo if it was true he never told police that appellant told Melo, "If you call[] the cops, I'll find you and I'll kill you, this is Grape Street." Melo indicated he remembered everything except the "Grape Street part."

[3] A CD containing the 911 call (People's exh. No. 4) and the reporter's transcript thereof (People's exh. No. 4A) were admitted into evidence. The transcript reflects that, during the 911 call, Melo stated, "It looks like he might've been from Grape Street and uh, Mexican Grape Street. Got the purple shirt."

Grape Street."[4] Los Angeles Police Officer Jose Delgado testified that he and his partner were the officers who met with Melo, and Delgado later prepared a report containing Melo's statement.

2. Gang Evidence.

Los Angeles Police Officer Carlos Lozano, a gang expert, testified as follows. A gang sought respect by fear and intimidation. Without these, a gang and its territory would be challenged by a rival gang, and community members would call the police and testify in court. For a gang, respect meant intimidation and a reputation for violence. A gang would build its reputation for violence by committing numerous public acts of violence.

The Southside Watts Barrio Grape gang (Grape) was a Hispanic criminal street gang.[5] Grape's primary activities

---

[4] During cross-examination, Melo's preliminary hearing testimony was quoted as follows. Appellant's counsel asked if the prosecutor had asked Melo (1) if the robber had said anything about "Grape Street" or (2) if Melo had told police that the robber had said "that." Melo replied yes. Appellant's counsel asked if Melo remembered not telling "that" to police, and Melo replied, "at this point that particular is not coming up" because Melo was focusing more on what had happened than on whether the robber had said Grape Street. Appellant's counsel asked, "At this point, [the robber] didn't say anything about Grape Street?" Melo replied, "I'm not a hundred percent sure he said it, yes or no." Melo also said he did not remember the robber "saying it" or Melo "telling the police that."

[5] The gang also used the names "Grape Street" and the Spanish word for "Grape." Another gang, the Eastside Grape Street Crips, also referred to itself as "Grape Street." However, the Eastside Grape Street Crips was a Black (rather than Hispanic) gang.

included robberies and street robberies, possession of firearms, assaults with deadly weapons, witness intimidation, and homicides. Grape was associated with the color purple, and Grape members often wore purple clothing. The present robbery occurred in Grape territory.

Lozano opined appellant was a Grape member; appellant had admitted his membership. In response to a hypothetical question based on evidence, Lozano opined the crime was committed for the benefit of Grape. He based this opinion on two facts.

The first was the benefit of maintaining an atmosphere of fear and intimidation in the community. Community members knew gang members had guns. An admitted gang member using a gun to commit a crime in a gang neighborhood enhanced the gang's reputation for violence and intimidation. This in turn limited community members' willingness to cooperate with police, testify, or prevent future gang crimes. The color red might be associated with a rival gang. If a gang member saw someone, not from the neighborhood, walking around and wearing a color representing another neighborhood, it was imperative that the gang member challenge that person.

The second fact on which Lozano based his opinion was that the taking of personal property from community members served as a valuable recruitment tool in poor neighborhoods. During cross-examination, Lozano testified he did not believe every crime committed by a gang member was for the benefit of the gang.

ISSUES

Appellant claims the trial court erroneously refused to give a defense-requested pinpoint instruction. Appellant also claims this court must independently review records examined by the trial court during the in camera hearing conducted pursuant to appellant's *Pitchess*[6] motion, so that this court can determine whether the trial court abused its discretion by not ordering further disclosure of information.

DISCUSSION

1. The Trial Court Properly Refused to Give Appellant's Pinpoint Instruction.

a. *Pertinent Facts.*

After the presentation of evidence and during discussions concerning jury instructions, appellant's trial counsel stated, "I'd ask for an instruction stating not every crime committed by a gang member is related to gang activity." The prosecutor objected, then the court stated, "In looking at [CALJIC No. 17.24.2], that instruction fairly well covers all questions regarding that. The instruction which you are proposing appears to be in nature argumentative or cumulative. So court will deny that request over your objection, will not give that instruction." (*Sic*.)

During its final charge, the court gave to the jury CALJIC No. 17.24.2, the gang enhancement instruction, and CALJIC No. 2.90, on the presumption of innocence and the People's burden of proof beyond a reasonable doubt. During closing argument, appellant conceded he robbed Melo, but denied he did so for the benefit of Grape or with the requisite specific intent. Appellant

---

6 *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

urged he robbed Melo because appellant needed money and, when robbing Melo, appellant was not working for the gang.

b. *Analysis.*

Appellant claims the trial court erroneously refused his request that the court give to the jury a pinpoint instruction stating, "not every crime committed by a gang member is related to gang activity." He argues that CALJIC No. 17.24.2 "did not make it clear that evidence of appellant's gang membership alone would not suffice to prove the enhancement allegation." We reject the claim.

"A trial court must instruct the jury, even without a request, on all general principles of law that are ' "closely and openly connected to the facts and that are necessary for the jury's understanding of the case." [Citation.] In addition, "a defendant has a right to an instruction that pinpoints the theory of the defense . . . ." ' [Citation.]" (*People v. Burney* (2009) 47 Cal.4th 203, 246 (*Burney*).)

"The court may, however, 'properly refuse an instruction offered by the defendant if it incorrectly states the law, [or] is argumentative, *duplicative, or potentially confusing*.' " (*Burney, supra*, 47 Cal.4th at p. 246, italics added; accord, *People v. Roldan* (2005) 35 Cal.4th 646, 741; see *People v. Fitzpatrick* (1992) 2 Cal.App.4th 1285, 1297 [cumulative, duplicative instructions properly may be refused].) Moreover, a trial court has a duty to refrain from giving *irrelevant* instructions that confuse the jury or relieve it from making relevant findings. (*People v. Alexander* (2010) 49 Cal.4th 846, 920.) We review de novo appellant's claim of instructional error. (*People v. Braslaw* (2015) 233 Cal.App.4th 1239, 1244; *People v. Johnson* (2009) 180 Cal.App.4th 702, 707.)

The trial court instructed the jury with CALJIC No. 17.24.2, stating in relevant part, "It is alleged in Count 1 that the crime charged was committed for the benefit of, at the direction of, or in association with a criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members. [¶] . . . [¶] The People have the burden of proving the truth of this allegation. If you have a reasonable doubt that it is true, you must find it to be not true. [¶] . . . [¶] The essential elements of this allegation are: [¶] 1. The crime charged was committed for the benefit of, at the direction of, or in association with a criminal street gang; and [¶] 2. This crime was committed with the specific intent to promote, further, or assist in any criminal conduct by gang members."

The language of CALJIC No. 17.24.2 essentially tracks section 186.22, subdivision (b)(1), which states in relevant part, "any person who is convicted of a felony 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, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony . . . of which he or she has been convicted, be punished as follows . . . ."

Appellant contends his pinpoint instruction was necessary because CALJIC No. 17.24.2 does not make it clear that "evidence of appellant's gang membership alone would not suffice to prove the enhancement allegation." But CALJIC No. 17.24.2 explicitly requires much more than gang membership. The instruction requires proof beyond a reasonable doubt that the crime "was committed for the benefit of, at the direction of, or in association with a criminal street gang; and . . . with the specific

intent to promote, further, or assist in any criminal conduct by gang members." By doing so, the instruction clearly implies that the essential elements of the gang allegation are not satisfied by mere gang membership.

Accordingly, appellant's requested instruction was duplicative of CALCRIM No. 17.24.2, which adequately covered the pertinent issues. A rational juror would reasonably understand from CALJIC No. 17.24.2, that the elements of the gang allegation as set forth in that instruction could not be satisfied by mere gang membership. In this way, appellant's proposed instruction was not necessary at all – in the same sense that it would be unnecessary to instruct the jury that not every encounter on the street is a robbery.

In addition, by stating that not every crime committed by a gang member is related to "gang activity," appellant's proposed instruction focused on a term that is irrelevant and confusing. The term "gang activity" was not defined anywhere in the jury instructions, and the term is legally distinct from the elements of the gang enhancement required by section 186.22, subdivision (b)(1), and specified in CALJIC No. 17.24.2.

For all of these reasons, no instructional error occurred.[7] Even if the trial court erroneously refused to give the defense-requested instruction, there was no prejudice. There was

---

[7] Criminal defendants have a due process right to have a meaningful opportunity to present a complete defense. (See *California v. Trombetta* (1984) 467 U.S. 479, 485 [104 S.Ct. 2528].) Notwithstanding appellant's suggestion to the contrary, in light of the evidence, instructions, and jury argument in this case, and appellant's election not to present defense evidence, no due process violation occurred.

overwhelming evidence in support of the gang enhancement from the testimony of Melo and Lozano. None of appellant's arguments about alleged deficiencies in the gang evidence are persuasive. The requested instruction was duplicative of CALJIC No. 17.24.2, which the court properly gave with CALJIC No. 2.90. Accordingly, the court's failure to give the requested instruction was harmless beyond a reasonable doubt because the jury necessarily resolved the issues adversely to appellant. (Cf. *People v. Jones* (1997) 58 Cal.App.4th 693, 709.)

Moreover, the jury, by its verdict, rejected any evidence or argument that appellant robbed Melo only for appellant's personal benefit. Any trial court error in refusing to give the defense-requested instruction was harmless under any conceivable standard. (Cf. *People v. Watson* (1956) 46 Cal.2d 818, 836; *Chapman v. California* (1967) 386 U.S. 18, 24.)

2. The Trial Court Fulfilled Its Responsibilities Under *Pitchess*.

Appellant filed a pretrial *Pitchess* motion seeking various information from the personnel files of Delgado pertaining to allegations relating to his dishonesty.[8] Appellant, citing to the supporting declaration of appellant's trial counsel, asserts here, "The *Pitchess* motion was based on facts that indicated that Delgado had falsified the police report in this case."

---

[8] The motion sought, inter alia, "complaints . . . relating to . . . fabrication of charges, fabrication of evidence, fabrication of reasonable suspicion and/or probable cause, . . . ; false arrest, perjury, dishonesty, writing of false police reports, . . . planting of evidence, [and] false or misleading internal reports."

The declaration indicated as follows. Delgado wrote a police report reflecting his interview of Melo. According to the report, Melo stated that, at the end of the robbery, the robber said that if Melo called the police, the robber would find Melo and kill him, and " 'this is Grape Street.' " Appellant's trial counsel maintained that, to support the gang allegation against appellant, Delgado fabricated Melo's alleged statement to Delgado.

At the December 18, 2014 hearing, the trial court, in open court, granted the *Pitchess* motion. On December 19, 2014, the trial court conducted an in camera hearing on the matter. This appellate court possesses the sealed reporter's transcript of those in camera proceedings. Following the in camera hearing, and in open court, the trial court ordered, pursuant to appellant's *Pitchess* motion, the release to appellant of certain discoverable materials, subject to a protective order.[9]

Appellant claims this court must independently review records examined by the trial court during the in camera hearing, so that this court can determine whether the trial court abused its discretion regarding appellant's *Pitchess* motion.

---

[9] Reporter's transcripts of the December 18 and 19, 2014 proceedings in open court are not before this court.

We disagree that we must examine the actual records themselves,[10] but agree appellant is entitled to an independent appellate review of whether the trial court abused its discretion. (*Mooc, supra,* 26 Cal.4th at pp. 1228-1229.)

Trial courts are granted wide discretion when ruling on motions to discover police officer personnel records. (*People v. Samayoa* (1997) 15 Cal.4th 795, 827; *People v. Memro* (1995) 11 Cal.4th 786, 832.) We have reviewed the contents of the sealed reporter's transcript of the December 19, 2014 in camera hearing pertaining to appellant's *Pitchess* motion. The transcript constitutes an adequate record of the trial court's review of documents provided to the trial court during the hearing, and fails to demonstrate the trial court abused its discretion by failing to disclose further information. (Cf. *Samayoa*, at p. 827; see *Mooc, supra,* 26 Cal.4th at pp. 1228-1230, 1232.) The trial court fulfilled its responsibilities under *Pitchess*.

---

[10] In *People v. Townsel* (2016) 63 Cal.4th 25 (*Townsel*), our Supreme Court observed, "[I]n *People v. Mooc* (2001) 26 Cal.4th 1216, 1229 [(*Mooc*)], we . . . stat[ed] that a judge making a *Pitchess* determination 'should . . . make a record of what documents it examined before ruling on the *Pitchess* motion. Such a record will permit future appellate review. . . . [*T*]*he court can . . . simply state for the record what documents it examined*. . . .' (See *People v. Myles* (2012) 53 Cal.4th 1181, 1209 [where the trial court stated for the record what documents it examined in making its *Pitchess* ruling, the record was sufficient for appellate review].)" (*Townsel*, at pp. 68-69, italics added; accord, *Mooc*, at p. 1228 [sealed transcript reflecting trial court's above statement is sufficient].)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

JOHNSON, (MICHAEL) J.*

We concur:

EDMON, P. J.

ALDRICH, J.

---

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.