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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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.

SANDRA ESPINOZA SPENCER et al.,

Defendants and Appellants.

2d Crim. No. B230684
(Super. Ct. No. 2008002721)
(Ventura County)

A jury found Sandra Espinoza Spencer guilty of solicitation of murder (Pen. Code, § 653f, subd. (b)) and conspiring to commit murder (§ 182, subd. (a)(1)).[1] The jury also found Spencer's codefendants Gonzalo C. Meza, Jr., and Benny Figueroa guilty of conspiring to commit murder. Defendants received indeterminate prison terms of 25 years to life. Defendants contend the judgments are not supported by substantial evidence, the trial court erred in admitting evidence of uncharged crimes and misconduct and the prosecutor committed misconduct. We affirm.

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

FACTS

The Motive

Anthony Navarro fraudulently obtained money through a real estate business he owned. Navarro operated the business with his wife, Sandra Espinoza Spencer. When Navarro was arrested for fraud in October 2003, Ventura County Deputy District Attorney, Marc Leventhal, was assigned to his case.

Initially, Navarro was released from custody while Leventhal investigated the claims against him. In June 2004, Leventhal had charges filed against Navarro, and a warrant issued for his arrest. The scheduled bail for the charged offenses was $60,000. Leventhal convinced the trial court to set bail at $200,000. Eventually, Leventhal learned Navarro was in custody in Riverside County on a misdemeanor charge of possessing false identification documents.

Leventhal appeared at the Riverside bail hearing and cross-examined Spencer on the source of the funds that would be used to post bail there. Leventhal was concerned the funds were derived from criminal activity.

Navarro's attorney, Ruben Sanchez, was present at the bail hearing. After the hearing, Sanchez offered Leventhal two cashier's checks. Sanchez represented that the checks were unrelated to criminal activity. Leventhal refused to accept the checks.

Navarro pled guilty to the Riverside charge, and was transported into custody in Ventura County. While Navarro remained in custody, Leventhal, through a series of motions, succeeded in having Navarro's bail increased from $200,000 to $500,000, eventually to $1 million. The increases were based on Leventhal's claim that Navarro represented an extreme flight risk, and that the money used to post bail was derived from criminal activity.

The Conspiracy

Spencer was angry with Leventhal for arguing that her husband's bail should be denied. She told a friend, Victor Brown, that Leventhal was "out to get them, that it was personal" and that "the bastard's going to get what he deserves." She

said she wanted to kill Leventhal because he was pursuing a personal vendetta against her and her family.

Brown owned a security company that employed Gonzalo Meza and Pablo Cruz. Brown, Meza and Cruz were staying with Spencer at her Ventura residence. Benny Figueroa was also staying with Spencer.

Brown testified that in October or November 2004, he attended a meeting in Spencer's home with Meza, Cruz, Figueroa and Spencer. Spencer said she wanted Leventhal killed. Meza replied it would take $50,000 to $75,000 to get rid of Leventhal. Meza said Figueroa was his gunman. Figueroa replied, "[T]hat's why I'm here." Figueroa lifted his jacket to reveal a handgun.

Cruz testified he attended a meeting at Spencer's house when she offered $50,000 to kill Leventhal. Meza said, "It's good." Figueroa said, "I'm going to do it."

Cruz testified that he attended a second meeting at Spencer's house. Spencer, Brown and Meza were present. At the meeting, Spencer offered $50,000 to the person who shot Leventhal. Meza nodded, yes. Spencer said she wanted Leventhal dead and with Leventhal dead it would be easier to get Navarro out of jail.

Some days later, Spencer, Brown, Meza, Cruz and Figueroa met again. Meza presented a plan to follow Leventhal as he drove from work, pull up beside him in a car and shoot him. Meza said he would drive the shooter. Both Cruz and Figueroa volunteered to be the shooter. Meza chose Figueroa.

Spencer and Meza asked Cruz to take pictures of Leventhal with his cell phone so they would not shoot the wrong person. Cruz took pictures of Leventhal at one of Navarro's bail hearings, but the pictures were too blurry to be of any use.

Cruz testified that he, Meza and Figueroa all carried handguns, but they believed they needed a bigger weapon to shoot Leventhal. Cruz obtained an AK-47 assault rifle and ammunition from someone in Palm Springs. Cruz gave the rifle to Meza. A few days later, Meza tested the rifle in a grassy area outside Spencer's house. Meza said they would use it to shoot Leventhal.

Mark McGowan worked for Sanchez in connection with Navarro's bail hearings. Sanchez brought McGowan to Spencer's house on two or three occasions. On one occasion, Sanchez complained to Meza about the difficulty he was having obtaining bail for Navarro because of Leventhal's efforts. Meza said that if Leventhal would not reduce bail or give Navarro a deal, "[T]hen we hit him. Make a move on him." Sanchez was confused about what Meza meant. Meza clarified, "Kill him." Sanchez said, "[G]o ahead and do it." Meza said Spencer would pay for it.

Around September 2004, Brown saw Spencer using her home computer trying to locate people. Spencer told Brown she entered Leventhal's name in the computer. For a period of months, she could not locate him. When she finally found him, she became excited. After Spencer found information about Leventhal on her computer, she had Brown drive her by Leventhal's office.

In the meantime, Spencer was in contact with Navarro by telephone. Navarro expressed his desperation to get out of jail. Spencer told Navarro that she had the money. She had $50,000 in her hands. She said she "robbed a bank."

Spencer was not joking. Brown testified that in January 2005, Brown, Spencer, Meza and Figueroa discussed their intent to rob a Wells Fargo Bank. Brown, Meza and Figueroa robbed the bank on January 6, 2005. They gave Spencer $40,000 from the proceeds.

Search of Spencer's House

In March 2006, the FBI conducted a search of Spencer's residence as part of a bank robbery investigation. They found a printout of the State Bar web page for Leventhal dated February 27, 2005. The printout contained handwritten entries that were consistent with Spencer's handwriting.

Another document listed Leventhal's personal information including home address and telephone number, Social Security number and date of birth. A handwritten note contained the words "'Mark Leventhal . . . 'will get what he deserves.'"

An investigator for the district attorney's office searched the hard drive on Spencer's computer. The only username on the hard drive was Spencer's first name, Sandra. A file containing Leventhal's personal information was created on September 24, 2005. On January 13 and 14, 2005, the computer was used to conduct web searches for Leventhal's name. The computer was also used to search for Leventhal's name on the State Bar's web site and pay-for-use web site to search for personal or business records.

Other Uncharged Misconduct

(a) Bank Robberies

The prosecution introduced evidence of other bank robberies. On December 20, 2004, Figueroa, Cruz, Brown and Meza robbed a Wells Fargo Bank; on January 22, 2004, Figueroa, Cruz, Brown and others robbed a Downey Savings; on February 7, 2005, Figueroa and others robbed a Wells Fargo Bank; and on March 16, 2005, Figueroa and another man robbed a Wells Fargo Bank. Figueroa was arrested as he fled. Spencer received a total of approximately $56,000 from all of the robberies.

(b) Jewelry and Liquor Store Robberies

Cruz testified that in September 2004, he and Figueroa robbed a jewelry store. Meza helped plan the robbery. Meza did not go to the store, but he loaned Figueroa his gun. On cross-examination Cruz admitted that before the December 2004 bank robbery he also participated with Meza and Figueroa in four liquor store robberies.

(c) Morales Incident

Brown helped bail out Jamie Morales. In return, Morales was supposed to help obtain bail for Navarro by having his father pledge some property. Instead, Morales disappeared. Spencer used her computer to obtain personal information about Morales. Eventually, Morales called Brown and told him where he was. Brown, Cruz, Meza and Figueroa went to find him. They beat Morales, and Figueroa threatened to kill him. Brown objected to killing Morales because he had put up his

bail money. Instead, Brown contacted the bail bondsman and turned Morales over to him.

(d) Spencer's Sexual Relationships

Brown testified that he had a sexual relationship with Spencer. Brown also said Meza claimed to have a sexual relationship with her. Cruz testified that Meza had a sexual relationship with Spencer, and that he saw Spencer and Sanchez "making out" in the Jacuzzi.

(e) Navarro's Crimes

Leventhal testified Navarro pled guilty to 24 felonies composed of multiple charges of grand theft, attempted grand theft, identity theft, loan fraud, money laundering, check fraud, forgery and filing forged instruments. He was sentenced to 14 years, 8 months.

Defense

None of the defendants testified on his or her own behalf.

An investigator with the district attorney's office testified he interviewed Spencer. Spencer told him she wrote, "He'll get what he deserves," during a telephone conversation she was having with another person. Jeanine Kloeris testified she said, "He'll get what he deserves," in reference to Navarro. She once dated Navarro, and did not like him.

Sanchez denied he ever spoke to Meza about killing Leventhal; nor did he ever tell anyone it would be a good idea to kill him.

DISCUSSION

I

Solicitation of Murder

Spencer contends there is no evidence she requested another person to commit murder. Thus she believes her conviction for solicitation of murder must be reversed.

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. (*People v. Johnson*, *supra*, at p. 578.)

Solicitation consists of asking another to commit one of the crimes specified in section 653f with the intent that the crime be committed. (*People v. Miley* (1984) 158 Cal.App.3d 25, 33.) Intent may be inferred from the circumstances. (*Ibid.*) The offense is complete once the request is made. (*Ibid.*)

Solicitation to commit murder requires the testimony of two witnesses or one witness and corroborating circumstances. (§ 653f, subd. (f).) The corroboration may be slight and, standing by itself entitled to little consideration. (*People v. Negra* (1929) 208 Cal. 64, 69.)

Cruz testified he was present at meetings where Spencer offered $50,000 to kill Leventhal. But Spencer argues Cruz's testimony is suspect. He testified that the prosecutor did not offer him anything for his testimony. Nevertheless, he was not prosecuted for a number of crimes, the commission of which he admitted. But that goes to the weight and credibility of the evidence. We have no power on appeal to reweigh the evidence or judge the credibility of all witnesses. (*People v. Stewart*, *supra*, 77 Cal.App.4th at p. 790.)

Spencer also argues that Cruz was an unindicted coconspirator. She claims his testimony was uncorroborated. The trial court instructed the jury that Cruz as a matter of law was an accomplice whose testimony must be independently corroborated.

In any event, Brown testified he was present at a meeting between Spencer, Meza and Figueroa in October or November 2004. Spencer said she wanted Leventhal killed. Meza said it would cost between $50,000 and $75,0000. Meza said Figueroa was the gunman. Figueroa replied, "[T]hat's why I'm here."

The trial court instructed the jury it must decide whether Brown was an accomplice. (§ 1111.)[2] The jury made no express finding on the matter. Where the record is silent we presume the jury made all findings necessary to support the judgment. (See *People v. Francis* (2002) 98 Cal.App.4th 873, 878.) We must assume the jury found Brown was not a coconspirator.

But even if Brown's testimony were not sufficient corroboration, McGowan's testimony is more than sufficient. McGowan testified he overheard a conversation between Meza and Sanchez. Meza told Sanchez that if Leventhal was unwilling to reduce Navarro's bail or give him a deal, Meza would kill Leventhal. McGowan testified Meza said that Spencer would pay for it. The material found in a search of Spencer's home also corroborated Cruz's testimony.

Spencer argues there is no evidence she intended that the crime of murder be committed. But Brown and Cruz reported that Spencer said she wanted to kill Leventhal or that she wanted him killed, and she offered to pay $50,000 for the murder. The jury was entitled to take Spencer at her word.

II

Conspiracy to Commit Murder

Spencer, Meza and Figueroa contend their convictions for conspiracy to commit murder are not supported by substantial evidence. Their arguments are substantially the same.

The crime of conspiracy is defined as two or more persons conspiring to commit any crime. (§ 182, subd. (a)(1).) There must be proof of an overt act in furtherance of the conspiracy by one or more of the parties to such an agreement. (§ 184.) The crime requires the specific intent to conspire as well as the specific intent to commit the offense which is the object of the conspiracy. (*People v. Swain* (1996) 12 Cal.4th 593, 600.)

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[2] The definition of an accomplice necessarily includes a coconspirator. (*Ibid.*)

The testimony of a coconspirator must be corroborated. (§ 1111.) The corroborating evidence is sufficient if it tends to connect the defendant with the commission of the crime in such a way as to reasonably satisfy the finder of fact that the coconspirator is telling the truth. (*People v. Griffin* (1950) 98 Cal.App.2d 1, 26.) The corroboration is sufficient even though it is slight and, when standing by itself, entitled to little consideration. (*Ibid.*)

Here the testimony of Brown and Cruz is that Spencer offered $50,000 to kill Leventhal. Meza agreed to be the driver and Figueroa agreed to be the shooter. That evidence was supported by McGowan's testimony and the evidence discovered in Spencer's home.

In addition, the prosecution alleged and presented evidence of six overt acts: (1) Spencer obtained Leventhal's personal information through computer research; (2) Spencer, Meza and Figueroa attended meetings in Spencer's home to plan Leventhal's murder; (3) Cruz used his cell phone to take pictures of Leventhal; (4) Brown drove Spencer to Leventhal's office to confirm Leventhal's whereabouts; (5) Meza obtained an AK-47 assault rifle; and (6) Meza tested the assault rifle.

Spencer's argument that there is no substantial evidence of an overt act, amounts to nothing more than a view of the evidence most favorable to her. An example will suffice. In attacking the first overt act, Spencer points to evidence that she used her computer to obtain personal information on Leventhal on September 24, 2005. By that time, Brown, Cruz, Figueroa and Meza had already been arrested and Navarro sentenced. Spencer ignores evidence of other computer searches. Brown testified he saw Spencer searching under Leventhal's name around September 2004. Spencer's search under Leventhal's name lasted for months. On January 13 and 14, 2005, Spencer's computer was used to search under Leventhal's name. Those incidents were prior to anyone's arrest and Navarro's plea of guilty.

Spencer, Meza and Figueroa argue that the second overt act, meetings at Spencer's house to plan the murder, is invalid as a matter of law. Their argument is

based on the theory that the meetings themselves constitute the conspiracy. They cite section 184 requiring the overt act be some act beside the agreement itself.

But the court rejected that argument in *People v. Von Villas* (1992) 11 Cal.App.4th 175. There the court determined that the agreement itself is not a tangible occurrence. (*Id.* at p. 244.) The court concluded that the trial court "did not err by allowing the prosecution to allege discussions and arrangements between the coconspirators as overt acts of a conspiracy." (*Id.* at p. 245.)

Spencer argues that evidence of the third overt act, Cruz took a cell phone picture of Leventhal, and the sixth overt act, Meza tested an AK-47, were based on Cruz's uncorroborated testimony. But the law requiring corroboration does not require corroboration in every detail. (*People v. Harper* (1945) 25 Cal.2d 862, 876.) It only requires that the testimony of an accomplice be corroborated by other evidence that tends to connect the defendant with the commission of the offense. (*Ibid.*) Cruz's testimony about overt acts does not require corroboration.

Spencer argues the fourth overt act, having Brown drive her past Leventhal's office, was not in furtherance of the conspiracy. But the plot was to shoot Leventhal as he drove his car. The most obvious place for the conspirators to locate Leventhal would be as he drove between his office and home. Viewing Leventhal's office and the surrounding area would be useful for that purpose. In fact, Spencer suggests no other reason for driving by Leventhal's office.

Spencer argues there is no evidence to support the fifth overt act, that Meza obtained the AK-47 assault rifle to be used in the murder plot. She argues Cruz testified he obtained the AK-47. It is true Cruz obtained the rifle from someone in Palm Springs. But Meza obtained the rifle from Cruz.

Proof of only one overt act is required. (*People v. Scott* (1964) 224 Cal.App.2d 146, 151.) Here the People alleged and proved six.

III

Spencer, Meza and Figueroa contend the trial court erred in admitting evidence of other crimes and Spencer's sexual relationships.

Evidence of other crimes is not admissible merely to show criminal propensity. (Evid. Code, § 1101, subd. (a).) But the evidence may be admitted to prove a material fact such as motive or intent. (*Id.* subd. (b).)

The trial court instructed the jury accordingly: "If you decide that the defendants committed the uncharged offenses, you may but are not required to consider that evidence for the limited purpose of deciding whether or not the defendants acted with the intent to commit murder in this case, or that the defendants had a motive to commit the offenses alleged in this case, or that the defendants had a plan or scheme to commit the offenses alleged in this case. [¶] Do not consider this evidence for any other purpose except for the limited purposes set forth above. [¶] Do not conclude from this evidence that the defendants have a bad character, or are disposed to commit crime." (CALCRIM No. 375.)

Here there is evidence of a number of robberies committed by members of the conspiracy, including robberies of banks, liquor stores and a jewelry store. There is also evidence that Spencer pled guilty to a money laundering charge as a result of money she received from the January 6, 2005, bank robbery.

The trial court found that the robberies were relevant to show motive and common scheme. Spencer was angry with Leventhal for increasing Navarro's bail because she had no money to post bail. The robberies and plotting to kill Leventhal were all part of the same scheme to free Navarro. The robberies raised money for bail and to pay for the murder, and the coconspirators believed that the bail amount would be reduced if Leventhal were off the case. Thus the evidence was admitted to prove a material fact, not criminal propensity. Evidence of uncharged crimes may be admitted to show the existence of motive even where the uncharged crime does not supply the motive. (*People v. Spector* (2011) 194 Cal.App.4th 1335, 1381.)

Moreover, the evidence was relevant to prove intent. At trial, the defendants claimed the alleged plot to kill Leventhal amounted to nothing more than talk; they never intended to kill him. Evidence that the defendants were willing to resort to robberies in order to free Navarro shows they were serious, and that Spencer

had a source of funds to pay for the murder. The evidence has a tendency in reason to prove the defendants had the intent to kill Leventhal.

Similarly, the Morales incident shows the defendants had the intent to kill. When Morales disappeared and reneged on his commitment to help bail out Navarro, Meza and Figueroa beat Morales and Figueroa threatened to kill him.

Nor did the trial court abuse its discretion under Evidence Code section 352. That section authorizes the trial court to exclude evidence where its probative value is substantially outweighed by the probability its admission will create a substantial danger of undue prejudice. In the context of Evidence Code section 352 "undue prejudice" applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues. (*People v. Felix* (1994) 23 Cal.App.4th 1385, 1396.) Certainly, there is a danger of undue prejudice any time evidence of uncharged crimes is admitted. But here the uncharged crimes evidence was highly relevant to show motive, common scheme and intent. Under the circumstances, we cannot conclude that the trial court abused its discretion under Evidence Code section 352.

In any event, if the trial court erred in admitting the evidence the error was harmless. Neither the United States Supreme Court nor the California Supreme Court has held the erroneous admission of other crimes evidence implicates a constitutional prohibition. There may well be circumstances under which the admission of other crimes evidence is so fundamentally unfair that it violates due process. This is not one of those instances. Accordingly, we apply the harmless error standard stated in *People v. Watson* (1956) 46 Cal.2d 818, 836.)

The trial court properly instructed the jury not to conclude from the evidence of uncharged offenses that the defendants have a bad character, or disposed to commit crime. We presume the jury followed the instruction. (*People v. Jones*, *supra*, 51 Cal.4th at p. 371.)

Moreover, evidence of the defendants' guilt of the charged offenses was overwhelming. Cruz's testimony was corroborated by Brown's testimony. Their

testimony was further corroborated by McGowan's testimony and the evidence found in Spencer's home. There is no reasonable probability the defendants would have obtained a more favorable result had the other crimes evidence not been admitted. (*People v. Watson, supra*, 46 Cal.2d at p. 836.)

Evidence of Navarro's crimes was admitted to explain why Leventhal argued for a high bail. That was the motive for the plot to kill Leventhal. Even if the evidence was irrelevant, any error in its admission was harmless. First, the evidence was of Navarro's crimes, not those of any of the defendants. Second, as we have explained, the evidence against the defendants was overwhelming.

Spencer argues evidence that she had sexual relations with Brown, Meza and Sanchez was irrelevant. The evidence of a sexual relationship with Meza was relevant to show why Meza would participate in the conspiracy. Even assuming Spencer's sexual relationship with Brown and Sanchez is irrelevant, any error is harmless. Not only is the evidence of Spencer's guilt overwhelming, but no reasonable juror would convict her of serious crimes because she acted promiscuously.

IV

Figueroa, Spencer and Meza contend the prosecutor committed misconduct. The contention is based on the prosecutor's statements during closing and rebuttal arguments. The prosecutor stated the bank robberies show to what lengths the defendants would go for Navarro's bail and that the Morales incident shows the intent to kill Leventhal. The defendants claim the statements are tantamount to arguing bad character and propensity to commit crimes.

But the defendants raised no objection to the statements. To preserve a claim of misconduct for appeal, the defendant must object and request an admonition. (*People v. Alfaro* (2007) 41 Cal.4th 1277, 1328.) Only if an admonition would not have cured the harm is the claim of misconduct preserved for review. (*Ibid.*)

Here not only did the defendants fail to object, but the trial court expressly instructed the jury it could not consider uncharged crimes evidence to conclude that the defendants have a bad character or are disposed to commit crime.

The court further instructed the jury it could consider such evidence only to show intent, motive or scheme to commit the offenses.

Here the prosecutor argued the uncharged crimes showed motive and intent. That was proper argument. There was no misconduct.

The judgments are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Charles W. Campbell, Judge[*]

Superior Court County of Ventura

Marilee Marshall & Associates, Inc., and Marilee Marshall for Defendant and Appellant Sandra Espinoza Spencer.

Marilyn G. Burkhardt, under appointment by the Court of Appeal, for Defendant and Appellant Gonzalo C. Meza.

Susan Pochter Stone, under appointment by the Court of Appeal, for Defendant and Appellant Benny Figueroa.

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[*] (Retired Judge of the Ventura County Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)