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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 TWO

THE PEOPLE, Plaintiff and Respondent, v. LISA MARIE BARBOA et al., Defendants and Appellants.	B270194 (Los Angeles County Super. Ct. No. BA413810)

APPEAL from a judgment of the Superior Court of Los Angeles County. George G. Lomeli, Judge. Affirmed, as modified.

Gloria C. Cohen, under appointment by the Court of Appeal, for Defendant and Appellant Lisa Marie Barboa.

Law Office of C. Matthew Missakian and Matthew Missakian, under appointment by the Court of Appeal, for Defendant and Appellant Michael Sperling.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant

Attorney General, Zee Rodriguez, Acting Supervising Deputy Attorney General, and Michael C. Keller, Deputy Attorney General, for Plaintiff and Respondent.

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Defendants Lisa Marie Barboa (Barboa) and Michael Sperling (Sperling) (collectively, defendants) appeal their convictions for conspiracy to commit extortion. They argue that the jury's verdict is not supported by substantial evidence, that the trial court erred in allowing two gang experts to label the scheme they furthered as "extortion," and that the court committed several sentencing errors. We conclude there is no defect with their convictions, but conclude that the trial court erred in treating Sperling's juvenile adjudication as a strike under our "Three Strikes" law (Pen. Code, §§ 667, subds. (a)-(d) & 1170.12, subds. (b)-(j).).[1] Accordingly, we affirm Barboa's conviction and sentence, affirm Sperling's conviction, and revise Sperling's sentence to a sentence of seven years to life.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

Since the 1970's, the Mexican Mafia has been controlling the members of other Hispanic gangs, both on the streets and in the prisons and jails of California. The Mexican Mafia operates "through fear and intimidation." Its symbol is the "black hand of death."

When an Hispanic male is placed in a California jail or prison, he has the option of swearing allegiance to the Mexican Mafia. If he elects not to swear allegiance, he is left to face the

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1 All further statutory references are to the Penal Code unless otherwise indicated.

other "predatory gangs" in prison or jail without any protection beyond that provided by the facility's custodial officers. If the inmate swears allegiance, the Mexican Mafia will protect him, but that protection comes with a price: He is required to follow the Mexican Mafia's rules.

Among other rules, all inmates under the protection of the Mexican Mafia must give the Mexican Mafia one-third of any drugs they smuggle into the facility (or one-third of the profit from the sale of such drugs). These are called "thirds." All inmates must also participate in a scheme referred to as the "kitty." The kitty scheme works as follows: An inmate must contribute some percentage of the items he purchases from the facility's commissary or store (often, 10 percent) to the kitty; the Mexican Mafia then resells those items to other inmates under its protection, usually at a discounted price; the inmates who buy items from the kitty then direct their relatives or friends on the outside to send money orders or Internet payments corresponding to the cost of those items to a person outside the jail who collects money and keeps records of payments (and who is usually called the "secretary"). If an inmate does not hand over thirds or decides not to contribute items or not to pay for items he buys from the kitty, he is viewed as "stealing" from the Mexican Mafia; he then faces "discipline" ranging from a fine to a beating to death. The "shot caller" who is in charge of the part of the prison or jail where the inmate is housed decides which discipline to impose. Although some shot callers impose milder discipline (such as fines or requiring the inmate to perform chores), the "usual[]" discipline is a beating.

In 2013, Sperling was an inmate in the Los Angeles County jail system. He belonged to a Hispanic gang called the Deadly

Young Psychos, but had sworn allegiance to the Mexican Mafia; at that time, he had a leadership position working for a shot caller and expressed interest in seeking a greater position. Barboa was Sperling's girlfriend, and she had several tattoos associated with the Mexican Mafia.

In June 2013, the leader of the Mexican Mafia in Southern California died, and Sperling was promoted to a shot caller. Sperling enlisted Barboa to be his "secretary," and to that end, she opened a post office box and obtained a second cell phone. They discussed collecting money from thirds and the kitty.

Later that summer, Barboa was arrested. With her was a purse containing 33 money orders worth a total of $3,230; all of them had some notation linking them with specific inmates, such as the inmate's name, booking number, gang moniker, or housing location within the jail. Around the same time, law enforcement executed a search warrant at Barboa's post office box. The box contained a tally report listing names and payments as well as money orders totaling $7,465 with various notations—"T" for thirds, "K" for kitty, and "F" for fines.

II. Procedural History

In the operative second amended information, the People charged Barboa and Sperling with conspiracy to commit extortion (§§ 182, subd. (a)(1), 519, 520).[2] The People further alleged that they committed the crime "for the benefit of, at the direction of, and in association with a criminal street gang" (§ 186.22, subds. (b)(1)(B), (b)(4)). The People also alleged Sperling's 1995 juvenile adjudication for assault with a deadly weapon qualified as a strike under the Three Strikes law.

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2 The People also charged defendants with conspiracy to commit murder, but the jury acquitted them of that charge.

A jury convicted defendants of conspiracy to commit extortion and found true the gang allegation. The trial court subsequently found that Sperling had suffered the 1995 juvenile adjudication and ruled that it constituted a strike.

The trial court sentenced Barboa to prison for seven years to life under section 186.22, subdivision (b)(4)(C). The court sentenced Sperling to 14 years to life, comprised of the sentence required by section 186.22, subdivision (b)(4)(C), doubled due to his prior strike.

Defendants filed timely notices of appeal.

DISCUSSION

I. Sufficiency of the Evidence

Defendants argue that their convictions for conspiracy to commit extortion are not supported by substantial evidence. In evaluating this claim, we ask whether the record contains enough evidence that is reasonable, credible, and of solid value for a reasonable trier of fact to find the defendants guilty beyond a reasonable doubt. (*People v. Brooks* (2017) 2 Cal.5th 674, 729.) We must look at the entire record, construe it in the light most favorable to the verdict, and "'"accept [all] logical inferences that the jury might have drawn from the evidence."'" (*People v. Salazar* (2016) 63 Cal.4th 214, 242.)

To convict a defendant of conspiracy to commit extortion, the People must prove that (1) the defendant "'had the specific intent to agree or conspire to commit'" extortion, (2) the defendant had the "'specific intent to commit the elements'" of extortion, and (3) "'"one or more of the parties"'" to the agreement committed an overt act in furtherance of the conspiracy." (*People v. Covarrubias* (2016) 1 Cal.5th 838, 888.) Although the crime of extortion is defined as "the obtaining of property from another,

with his consent . . . induced by a wrongful use of force *or* fear" (§ 518, italics added), the People proceeded against the defendants solely on the basis of the wrongful use of fear. "Fear, such as will constitute extortion, may be induced by a threat . . . [¶] [t]o do an unlawful injury to the person or property of the individual threatened or of a third person." (§ 519, subd. 1.) So narrowed, extortion is (1) "[a] wrongful use of . . . fear," (2) "with the specific intent of inducing the victim to consent to the defendant's obtaining his or her property," (3) "which does in fact induce such consent and results in the defendant's obtaining property from the victim." (*People v. Hesslink* (1985) 167 Cal.App.3d 781, 789.) What matters is "the intent of the person who makes the threat[,] and not the effect the threat has on the victim." (*People v. Bollaert* (2016) 248 Cal.App.4th 699, 726.)

Substantial evidence supports the jury's finding that defendants conspired to commit extortion. The Mexican Mafia's thirds and kitty schemes satisfy the definition of extortion because they required inmates who swore allegiance to the Mexican Mafia to surrender their drugs, their commissary purchases, or their money under pains of being fined or beaten. Defendants knew how these schemes operated: Sperling had served as a shot caller's aid; Barboa put Sperling in touch with the Mexican Mafia's new management after the prior leader died, discussed the thirds and kitty schemes with Sperling, and assisted Sperling in collecting money and keeping records of who paid (and, consequently, who did not). Defendants' agreement to become active managers in the Mexican Mafia's ongoing extortion schemes is evidence of the first two elements of the crime of conspiracy to commit extortion—namely, that they specifically

intended to commit extortion and to do so with each other. (Accord, *Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1584 [defendant is "liable for joining an ongoing conspiracy . . . [if] there [is] evidence that the joiner had *actual knowledge* of the scheme"].) Evidence of the final element of conspiracy was also ample because evidence supported the jury's findings that defendants committed several of the alleged overt acts, including Barboa's opening a post office box, her acquisition of a second cell phone, her role in collecting money orders and keeping pay-and-owe records, and Sperling's request for confirmation of his new position as shot caller.

Defendants effectively raise three objections to this analysis. First, they assert that there was insufficient evidence that the Mexican Mafia's thirds and kitty schemes were extortionate because Hispanic inmates can choose whether to pledge allegiance to the Mexican Mafia when they enter prison or jail. This argument fails factually and legally. Factually, the choice not to pledge allegiance leaves an inmate to go it on his own against other "predatory" prison or jail gangs; contrary to defendants' assertion, the refusal to protect a person from the physical violence of others can be coercive. (See *Arizona v. Fulminante* (1991) 499 U.S. 279, 287-288.) Legally, and more to the point, the voluntariness of an inmate's initial decision to swear allegiance is irrelevant to what makes these schemes extortionate—namely, that the Mexican Mafia obtains drugs, commissary items, or money from the inmates who *do* swear allegiance by threatening them with physical violence if they do not hand over their property. Indeed, under defendants' argument, "loan sharking" would not constitute extortion because the borrower's initial decision to borrow was voluntary;

defendants' argument is not the law. (See *Morrison v. California Horse Racing Bd.* (1988) 205 Cal.App.3d 211, 214, 221.)

Second, defendants argue that there was insufficient evidence that either of them *personally* threatened inmates to hand over their drugs or commissary items (as part of a "shakedown") or threatened inmates who did not have their relatives reimburse the kitty (as part of "loan sharking"); absent threats to identified victims, they argue, the jury was impermissibly convicting them for merely being gang members. This argument lacks merit for several reasons. To begin, defendants stand convicted of *conspiracy* to commit extortion. Because conspiracy criminalizes the *agreement* to commit a crime, it "'does not require the *commission* of the substantive offense that is the object of the conspiracy.'" (*People v. Morante* (1999) 20 Cal.4th 403, 416-417, italics added.) Thus, the absence of evidence of specific threats against specific inmates is of no consequence. The absence of evidence of defendants' personal involvement in making threats is also of no consequence. That is because "'[i]t is not necessary that a party to a conspiracy shall be present and personally participate with his coconspirators in all or any of the overt acts'"; instead, """[e]ach [conspirator] is responsible for everything done by his confederates, which follows incidentally in the execution of the common design . . . ."" [Citations.]" (*Id.* at p. 417.) Defendants respond that they cannot be convicted of conspiracy on the basis of the acts of coconspirators committed before defendants joined the conspiracy. This is true (*People v. Hardeman* (1966) 244 Cal.App.2d 1, 51; *People v. Weiss* (1958) 50 Cal.2d 535, 563-566), but (again) of no consequence because defendants' liability in this case rests upon their act in agreeing to join an ongoing

extortionate scheme and their personal commission of overt acts in furtherance of that scheme, all while specifically intending to further that scheme.

Lastly, defendants contend that there is insufficient evidence that the inmates or their loved ones sending money were acting out fear. Defendants point to evidence that some shot callers prefer not to resort to physical violence when an inmate does not contribute to the thirds or kitty schemes. However, that very same witness who so testified also indicated that shot callers "usually" resort to violence, and other witnesses testified that beatings were the common response to noncompliance. Because we must view the evidence in the light most favorable to the verdict, the existence of conflicting evidence does not undermine the sufficiency of the evidence underlying that verdict. Relatedly, defendants point to the testimony of one detective who stated that no one he interviewed indicated they had been threatened. However, the detective explained that he had interviewed two people who had sent money orders to Barboa, and had never asked them whether they had sent money to avoid physical harm to their loved ones; the detective deemed such a question unnecessary because "the form of extortion and the kitty are hand-in-hand." The detective's failure to confirm that threats had been made in those two instances does not undermine the ample evidence elsewhere demonstrating that the thirds and kitty schemes were premised upon coerced donations induced by fear.

II. Evidentiary Issues

The People presented two expert witnesses on the Mexican Mafia. The first expert began by explaining that "[t]he kitty is an extortion scheme that was implemented by the Mexican Mafia,"

and went on to explain the details of how it operates. When asked *why* the kitty was an extortionate scheme, the expert responded that inmates "have to do this when [they] come into the jails" to "show[] [their] allegiance to the Mexican Mafia" or else "there is discipline"—namely, "[they] can be assaulted or [they] can be killed." The second expert witness also began by explaining that the "kitty . . . is an extortion scheme that was implemented by the Mexican Mafia organization to tax . . . people that are under their umbrella of the Mexican Mafia," and also went on to explain how the scheme operates. Defendants assert that the expert witnesses' characterization of the kitty scheme as "extortionate" violated the Evidence Code because it (1) impermissibly embraced the ultimate issue to be decided, (2) was unnecessary, and (3) violated the mandate of *United States v. Mejia* (2d Cir. 2008) 545 F.3d 179 (*Mejia*). We review evidentiary questions for an abuse of discretion. (*People v. Clark* (2016) 63 Cal.4th 522, 597.)

The experts witnesses' opinions did not impermissibly embrace the ultimate issue. As a general rule, experts are allowed to offer opinions that "embrace[] the ultimate issue to be decided." (Evid. Code, § 805.) Such an opinion is impermissible only if it (1) "expresses a general belief as to how the jury should decide the case" (*People v. Lowe* (2012) 211 Cal.App.4th 678, 684), or (2) defines a statutory term (*People v. Torres* (1995) 33 Cal.App.4th 37, 45-46; *People v. Clay* (1964) 227 Cal.App.2d 87, 98 (*Clay*); *People v. Gosset* (1892) 93 Cal. 641, 645). Telling the jury how to decide the case impermissibly "invade[s] the province of the jury to decide a case" (*Lowe*, at p. 684), while defining statutory terms impermissibly invades the province of the court to instruct the jury (*Torres*, at pp. 45-46).

The experts' characterization of the kitty scheme as extortionate did not violate these rules. Although whether the kitty scheme qualifies as extortion was certainly an important issue, it was not the ultimate issue. Defendants were charged with conspiracy to commit extortion, not extortion itself, so the nature of the scheme was relevant to two of the three elements of conspiracy; the jury had other matters still to decide. In any event, the testimony was appropriate even if we treat it as going to the ultimate issue. Characterizing the kitty scheme as extortionate is akin to permissible expert testimony "describ[ing] the *modus operandi* of a certain class of criminals" (*Clay*, *supra*, 227 Cal.App.2d at p. 98); it does not express a general belief on the outcome of the case. (Cf. *Langdon v. Superior Court* (1923) 65 Cal.App. 41, 43-44 [trial court told the jury what verdict to return].) The experts' characterization also did not define any statutory terms. Indeed, there was no instructional "gap" to fill because the trial court instructed the jury on the definition of extortion. Instead, the experts' characterizations were a shorthand way of indicating their opinions that the scheme met the statutory definition of extortion. This type of expert testimony is permissible. (See *People v. Franklin* (2016) 248 Cal.App.4th 938, 949 [""Expert opinion that particular criminal conduct benefited a gang" is . . . permissible""].)

With respect to necessity, an expert may only offer an opinion if it is "[r]elated to a subject that is sufficiently beyond common experience that the opinion . . . would assist the trier of fact." (Evid. Code, § 801, subd. (a); *People v. Nelson* (2016) 1 Cal.5th 513, 536.) There is no question that the experts' testimony about the workings of the kitty scheme were "beyond [the] common experience" of jurors. (*People v. Sandoval* (2015)

62 Cal.4th 394, 415 ["the subject of gang tactics is sufficiently beyond common experience to be a proper subject of expert testimony"].) We need not decide whether their characterization of the scheme as extortionate was beyond the common experience of jurors because, even if it was not, any error was harmless in light of the overwhelming evidence that the scheme satisfied the requirements of the crime of extortion, as explained above.

In *Mejia*, the Second Circuit held that experts may not offer opinions based specifically on facts of the case in which they are testifying. (*Mejia*, *supra*, 545 F.3d at pp. 190-191.) California law is to the contrary. (*People v. Vang* (2011) 52 Cal.4th 1038, 1046 ["the questions [posed to an expert] must be rooted in the evidence of the case being tried, not some other case"].)

III. Sentencing Issues

A. Propriety of Gang Enhancement

In sentencing each defendant for conspiracy to commit extortion, the trial court imposed a base sentence of seven years to life, rather than the typical base sentence for extortion of two, three, or four years (§ 520), due to section 186.22, subdivision (b)(4)(C). That provision provides for a sentence of seven years to life for "[a]ny person who *is convicted of*" "extortion, as defined in Section 519," if the crime was "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." (§ 186.22, subd. (b)(4)(C), italics added.) Defendants acknowledge that the jury found their crime to be committed for the Mexican Mafia's benefit and with the specific intent to aid gang members, but raise two objections to the trial court's reliance on section 186.22, subdivision (b)(4)(C): (1) they were convicted of conspiracy to extort based on "force or

fear," not just "fear," so this subdivision's prerequisite is missing, and (2) the subdivision only applies to defendants who are "convicted of" extortion, and they were convicted of a different crime—namely, conspiracy to extort. This first issue is one of substantial evidence; the second is a question of statutory interpretation, which we review de novo. (*People v. Prunty* (2015) 62 Cal.4th 59, 71.)

Defendants' first objection lacks merit because the trial court's instructions required the jury to find that defendants agreed to commit and specifically intended to commit extortion through the use of fear. The jury's verdict reflects its finding that defendants did so. Thus, the factual basis for applying section 186.22, subdivision (b)(4)(C) is present. (Cf. *People v. Anaya* (2013) 221 Cal.App.4th 252, 272-273 [enhancement inapplicable when extortion based on use of force *and* fear].)

Defendants' second objection also lacks merit. Our Legislature has specified that the crime of conspiracy to commit a felony "shall be punishable in the same manner and to the same extent as is provided for the punishment of that felony." (§ 182, subd. (a).) Does this statute's mandate that conspiracy to extort be sentenced the same as extortion itself mean that section 186.22, subdivision (b)(4)(C)'s enhancement for persons "convicted of" gang-related extortion applies to persons "convicted of" gang-related conspiracy to commit extortion? Our Supreme Court's decision in *People v. Athar* (2005) 36 Cal.4th 396 (*Athar*) strongly suggests that the answer is "yes." There, the Court held that a sentencing enhancement for persons "punished under" the statute for money laundering applies to persons convicted of conspiracy to money launder. (*Id.* at pp. 401-405.) In coming to this conclusion, the Court placed weight on the facts that "the

punishment for a conspiracy to commit the felony of money laundering is the same as that for money laundering" and that the purpose of the enhancement was to deter "large-scale laundering" and hence "the conspiracies that necessarily underlie" such operations. (*Id.* at pp. 401, 404.) The same rationales apply here: The punishment for conspiracy to extort is the same as extortion, and gang-related extortion—like large-scale money laundering operations—necessarily relies on the cooperation of many people. A contrary interpretation would undermine the enhancement's applicability to the type of conduct at its core, and would thus undermine its efficacy.

Defendants resist this conclusion, and offer two arguments. First, they note that the enhancement in *Athar* refers to persons "punished under" the substantive crime rather than "convicted of" the substantive crime. (*Athar*, *supra*, 36 Cal.4th at pp. 400-401; see § 186.10, subd. (c)(1).) For support, they cite a passage in *Athar* itself. In that passage, the Court discussed Athar's argument that our Legislature necessarily treats substantive offenses differently than conspiracies to commit them, and as evidence of this principle, cited to the Legislature's decision to amend a sentencing enhancement in the Health and Safety Code that initially reached only the substantive offense by adding language indicating that it also reached conspiracies to commit that offense. (*Athar*, at p. 405.) Athar reasoned that this would have been unnecessary if conspiracies and substantive offenses were synonymous. The *Athar* Court was unpersuaded. (*Ibid.*) The Legislature's actions in amending that provision, the Court found, were necessary to remove "doubt[s] as to its applicability" to conspiracies; however, "[t]he general plain meaning expressed in section 182, subdivision (a), that a conspirator will be punished

in the same manner and to the same extent as one convicted of the underlying felony, does not require additional legislative clarity." (*Ibid.*) Although defendants are correct that the enhancement statute in *Athar* used the words "punished under" rather than "convicted of," *Athar*'s logic applies with equal force no matter what the phraseology. (Accord, *People v. Villela* (1994) 25 Cal.App.4th 54, 57, 60-61 [statute requiring persons "convicted of" certain narcotics offenses to register as narcotics offenders applies to persons convicted of *conspiracy* to commit those crimes].)

Second, defendants argue that section 186.22, subdivision (b)(4)(C), is at a minimum ambiguous, and urges that the rule of lenity requires us to resolve that ambiguity in their favor. We disagree. The rule of lenity comes into play when a statute "is susceptible of two constructions." (*People v. Overstreet* (1986) 42 Cal.3d 891, 896.) *Athar* determined there was no ambiguity and declined to apply the rule; for the same reasons, so do we.

B. Sperling's Strike Conviction

Our Three Strikes law requires a trial court to double a defendant's sentence if he has a prior "serious" or "violent" felony. (§§ 667, subd. (e)(1) & 1170.12, subd. (c)(1).) Assault with a deadly weapon is a serious or violent felony only if the defendant *personally* "inflicts great bodily injury on a[] person other than an accomplice." (§§ 667.5, subd. (c)(8) & 1192.7, subd. (c)(8).) Because it is undisputed that the conduct underlying Sperling's 1995 juvenile adjudication for assault with a deadly weapon involved his accomplice's infliction of injury rather than his own, that adjudication does not qualify as a serious or violent felony. To be sure, the Three Strikes law also defines a "serious and/or violent felony" as a juvenile adjudication listed in Welfare and

Institutions Code section 707, subdivision (b) (§§ 667, subd. (d)(3)(B) & 1170.12, subd. (b)(3)(B)(i)), and section 707, subdivision (b) lists the crime of "[a]ssault by any means of force likely to produce great bodily injury"—without any requirement that defendant personally inflict that injury (Welf. & Inst. Code, § 707, subd. (b)(14)). But treating juvenile adjudications of assault not involving the defendant's personal infliction of injury as strikes but not treating adult convictions of the same as strikes would violate equal protection. (*People v. Leng* (1999) 71 Cal.App.4th 1, 10-11, 15.) As a result, the trial court erred in treating Sperling's 1995 juvenile adjudication as a strike. The People concede as much. Sperling's sentence must accordingly be reduced to seven years to life.

C. Barboa's Constitutional Challenge To Her Sentence

The Eighth Amendment of the federal Constitution prohibits "cruel *and* unusual punishments," and has been read to contain a "narrow proportionality principle" that forbids extreme sentences that are "grossly disproportionate" to the crime. (*Ewing v. California* (2003) 538 U.S. 11, 20; *Harmelin v. Michigan* (1991) 501 U.S. 957, 996-997 (conc. opn. of Kennedy, J.).) California's prohibition on "cruel *or* unusual punishment" (Cal. Const., art. I, § 17; *People v. Murray* (2012) 203 Cal.App.4th 277, 285, overruled on another ground in *People v. Gutierrez* (2014) 58 Cal.4th 1354, 1370), has been read to bar any sentence "'so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity.'" (*People v. Boyce* (2014) 59 Cal.4th 672, 721, quoting *In re Lynch* (1972) 8 Cal.3d 410, 424, italics omitted.) California courts examine three criteria in assessing disproportionality: (1) the nature of the offense and offender, with emphasis on her

danger to society, (2) the penalty imposed compared with the penalties for more serious crimes in California, and (3) the punishment for the same offense in other jurisdictions. (*People v. Christensen* (2014) 229 Cal.App.4th 781, 806-807.) Whether a sentence is cruel and/or unusual is a question of law subject to independent review, although we view the facts of the crime in the light most favorable to the verdicts. (*People v. Em* (2009) 171 Cal.App.4th 964, 971.)

Barboa argues that her sentence of seven years to life for conspiring to commit extortion is cruel and unusual punishment because (1) she only acted as the secretary in collecting money and keeping records, making her culpability minimal, and (2) she presented an expert witness who testified that she suffered from "posttraumatic stress disorder, and as a derivative, battered women's syndrome" because she had been victimized by family members and by her prior boyfriends (other than Sperling).

Barboa's sentence was not cruel or unusual under the federal or California Constitutions. Her role as secretary was integral to the operation of the Mexican Mafia's thirds and kitty schemes, and it was a role that she exuberantly undertook. Her prior victimization, while regrettable, does not appear to have been the motivating factor for her involvement in the conspiracy. To the contrary, upon learning of Sperling's "promotion" within the Mexican Mafia's hierarchy, she told him, "Hi, big daddy. Are you ready to take over the world?" and went on to explain how she had already lined up a post office box and obtained a new cell phone. Her contemporaneous behavior reflects excitement at the prospect of her involvement, not reluctance. More generally, participating as a member of a criminal street gang's extortion machinery is a "serious" felony (see *People v. Briceno* (2004)

34 Cal.4th 451, 464), and a sentence of seven years to life is neither conscience shocking nor disproportional to the crime.

DISPOSITION

As to Barboa, the judgment is affirmed.

As to Sperling, the trial court's determination that his 1995 juvenile adjudication for assault with a deadly weapon constitutes a strike is reversed, and his sentence is reduced to seven years to life. The judgment is otherwise affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ