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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MISHELLE GEORGINA ALBANES,

Defendant and Appellant.

B234846

(Los Angeles County
Super. Ct. No. PA064818)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Ronald S. Coen and Beverly Reid O'Connell, Judges. Affirmed.

Sylvia Koryn, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Mishelle Georgina Albanes appeals from the judgment entered following her pleas of guilty to attempted murder (Pen. Code, §§ 664/187, subd. (a)), two counts of possession of a controlled substance for sale (Health & Saf. Code, § 11351), as to one of which the controlled substance exceeded one kilogram by weight (Health & Saf. Code, § 11370.4, subd. (a)), child abuse (Pen. Code, § 273, subd. (a)), two counts of kidnapping (Pen. Code, § 207), two counts of second degree robbery (Pen. Code, § 211) and one count of voluntary manslaughter (Pen. Code, § 192, subd. (a)), and her admission that, with regard to the attempted murder and the voluntary manslaughter, principals were armed with firearms (Pen. Code, § 12022, subd. (a)(1)). The trial court sentenced Albanes to 30 years 8 months in prison. We affirm.

FACTUAL AND PROCEDURAL HISTORY

*1. Facts.*¹

On June 5, 2009, Los Angeles Police Officer Nathan Brenner, was working on the Crime Task Force of the Mission Division. On that day, he went to apartment No. 10 at 18435 Keswick Street in Reseda. Police had “staked” out the apartment because Albanes, who lived there, matched the description of a suspect in a murder.

Brenner and Officer Seibert, who had accompanied Brenner that day, were dressed in plain clothes and sitting in a Toyota Sequoia parked just north of the front of the house. The garage door opened and the officers saw Albanes driving down the driveway in a Toyota Corolla. In the back seat, was a baby in a baby seat.

Seibert, who was driving the Sequoia, followed Albanes as she drove down the street, then pulled into the parking lot of a CVS pharmacy on Reseda Boulevard. After she had parked, Seibert pulled in behind her. As Albanes got out of the car, Brenner approached her and asked her if her name was Mishelle. When she answered that it was, Brenner took her purse, put it on the trunk of the car and placed Albanes in handcuffs. While they were waiting for a female officer to conduct a search of Albanes, Brenner

¹ The facts have been taken from the transcript of the preliminary hearing.

looked in Albanes's purse and found a scale and a clear plastic baggie which contained a white substance resembling cocaine.

The following day, on June 6, 2009, Los Angeles Police Officer Manuel Armijo, who was assigned to Mission Homicide, conducted a search of the house at 18435 Keswick. During the search, the officers found in Albanes's upstairs bedroom some "baby items," such as a crib and clothing. In addition, officers discovered money, narcotics and cell phones. In a top dresser drawer, an officer found "a bundle" of 10 folded \$100 bills. In a shoebox in the bottom of the closet, officers found two bindles of a "white substance," twenty-nine \$20 bills, one \$50 bill and two \$100 bills. Armijo took the money, narcotics and phones back to the station and booked them into "evidence property."²

Los Angeles Police Detective Joe Danny Garcia, an experienced narcotics officer, was assigned to the Mission Area Narcotics Enforcement Detail "where [his] primary duty . . . [was] to conduct extensive narcotics investigations, specifically in the [area of the] transportation and sales of narcotics." He had qualified as a narcotics expert in both state and federal court.

In the present matter, he "review[ed] the reports and evidence taken from the search of . . . Albanes's purse and her home" "Based on [his] training and experience, the totality of the circumstances, the arrest report . . . , the narcotics that were recovered, the digital scale that was recovered, the amount of narcotics recovered, the [way] in which they were packaged [(in three separate baggies)] and the U.S. currency recovered, [Garcia] form[ed] the opinion that the narcotics were possessed for the purpose[] of . . . sales." Depending on the "purity level of the narcotics" and the "relationship between the dealer and the seller," the value of the cocaine would vary. The wholesale price could range from \$900 to \$1,600. Although Garcia indicated that he

² Armijo had not determined whether anyone besides Albanes, including the baby's father, had access to the bedroom.

would put “this into . . . a low to mid level dealer range,” there was no evidence that the cocaine was being packaged and sold from Albanes’s room.

Garcia indicated that, in a larger scale narcotics operation, it would not be unusual to find firearms. In the present case, no weapons of any kind were found on Albanes or in her room.

Garcia testified that, although he looked at the police report, he did not read “the entire murder book.” He read the “follow-up report prepared by . . . Detective Gonzalez, which gave a synopsis of the entire case.” Garcia did see the portion of the report which indicated that this incident had been “a drug deal gone bad.”

Los Angeles Police Detective Mario Gonzalez was assigned to homicide at the Mission Station. On May 22, 2009, the detective went to the intersection of Garrick Avenue and Dyer in Sylmar, where the victim, Mateo Carranza, had died while lying in the street. The detective also observed “.22 and .9 millimeter . . . caliber casings, . . . a pair of plastic gloves [and] blood splatter on the street and a vehicle,” a Lincoln Aviator. The dark sport utility vehicle (SUV) was registered to an individual named Sandy Cuevas.

The following day, May 23, 2009, Gonzalez spoke with Marco Cuevas. Cuevas and Carranza had been friends and, the evening before, Carranza had called Cuevas and asked him for a ride. Cuevas had driven Carranza to the corner of Garrick and Dyer in Sylmar. Shortly after they had arrived, a white BMW being driven by “an attractive female blonde,” arrived. Also in the car were a male passenger in the front seat and a male passenger in the rear, on the driver’s side. Cuevas did not know either man.

After the BMW made a U-turn and parked in front of Cuevas’s car, Carranza got out and approached the BMW. As he did so, the two male passengers got out of the BMW and began “firing” at Carranza. When Cuevas saw Carranza fall to the ground, he got out of the car and began to run. As he ran, he was chased by one of the men from the BMW, who began to fire shots at him. Cuevas suffered multiple gunshot wounds to the back of his legs and his buttocks. He was, however, able to get away. He jumped over a

block wall and hid, then called his wife to come pick him up. Cuevas's wife picked up Cuevas and immediately took him to Saint Joseph's Hospital in Burbank.

Gonzalez interviewed Albanes on June 5, 2009. After advising her of her *Miranda*³ rights, Albanes agreed to speak with the detective. She told him that she was 17 years old and that she was upset about having been arrested and taken into custody. When Gonzalez told her that she was being detained for the narcotics found in her purse as well as "another incident," Albanes indicated that, through a friend, she had "hooked up" with Carranza "as a connection for drugs." She had been texting Carranza and had set up a meeting with him for May 22, 2009. Albanes stated that she had planned on purchasing a kilo of cocaine from Carranza for \$18,000. However, since Albanes had only \$1,000, she and her accomplices, Luis Cardona and Brandon Schmidt, decided to "rip [Carranza] off[.]" They would "kidnap him, tie him up and hold him for ransom." Carranza had apparently "ripped off" a friend of Albanes's named Ernie and she, Cardona and Schmidt planned to hold Carranza at Ernie's place.

On May 22, 2009, Albanes was driving a white BMW which belonged to Cardona. She picked up Schmidt and Cardona, who were both armed with handguns. The two men got into the trunk of the car and Albanes then proceeded to the intersection of Reseda and Plummer, where she picked up Carranza. Carranza directed Albanes to drive to the intersection of Garrick and Dyer in the Sylmar area. When she reached the intersection, she parked and they waited for between 20 and 30 minutes. A dark SUV then pulled up and parked "very close" to the trunk of the BMW. Carranza got out of the BMW and met with Cuevas as he was sitting in the SUV. Cuevas got out of the SUV and the two men walked over to the BMW. Carranza got into the front seat and Cuevas, who was wearing plastic gloves and carrying a package of cocaine, got into the rear, driver's side passenger seat.

"All of a sudden," Schmidt and Cardona got out of the trunk of the BMW. Carranza quickly got out of the car and said, " 'I don't have anything.' " Cardona and

³ *Miranda v. Arizona* (1966) 384 U.S. 436.

Schmidt immediately shot him. Schmidt then opened the back door of the BMW and told Cuevas to “ ‘get the fuck out of the car and leave [his] shit.’ ” Cuevas got out of the car and, as he began to flee, Schmidt and Cardona “chased after him while firing” their weapons. However, after a short time, Schmidt and Cardona returned to the BMW. Schmidt got into the back seat, Cardona entered the front passenger seat and “they all three sped away.”

According to Albanes, Schmidt and Cardona split the cocaine between the two of them. As to the handguns, Albanes believed Cardona either sold his or gave it to a friend. She did not know what Schmidt did with his gun, but it was somehow “disposed of.”

Albanes knew about Cardona’s and Schmidt’s plan; the three had talked about it throughout the day. That day, Albanes had been sober. However, Schmidt and Cardona had been “doing narcotics throughout the day.”

Gonzalez spoke with Albanes’s mother, Rosemary Muller, several days later. Muller verified that Albanes’s date of birth was July 24, 1991.

Gonzalez had interviewed Albanes at the police station.⁴ When she indicated that she was upset about being arrested and upset about her baby, Gonzalez told her that she was being investigated “not only for the narcotics that she had on her, but also an additional investigation that [he] was conducting” Although Albanes used drugs, Gonzalez could not recall if she ever indicated that she dealt in drugs. It was clear, however, that her boyfriend, Cardona, did.

2. Procedural history.

In a 10-count amended information filed May 13, 2010, Albanes was charged in count 1 with the murder of Carranza in violation of Penal Code section 187, subdivision (a). It was further alleged that the offense was a serious felony within the meaning of Penal Code section 1192.7, subdivision (c) and a violent felony within the meaning of Penal Code section 667.5, subdivision (c). In count 2 it was alleged that Albanes committed the attempted willful, deliberate and premeditated murder of Cuevas in

⁴ A recording of the interview was made and placed on a DVD.

violation of Penal Code sections 664 and 187, subdivision (a). It was further alleged that the offense was committed willfully, deliberately and with premeditation within the meaning of Penal Code section 664, subdivision (a), and is a serious felony pursuant to Penal Code section 1192.7, subdivision (c). Count 3 alleged the crime of possession for sale of a controlled substance, cocaine, in violation of Health and Safety Code section 11351. It further alleged that conviction of this offense required registration pursuant to Health and Safety Code section 11590 and that failure to register was a crime pursuant to Health and Safety Code section 11594. In count 4 it was alleged that Albanes committed the crime of child abuse in violation of Penal Code section 273a, subdivision (a) by willfully and unlawfully “caus[ing] and permit[ting] the person and health of said child to be injured and did willfully cause and permit said child to be placed in such [a] situation that his/her person and health was/were endangered.” Count 5 alleged that Albanes committed the crime of the kidnapping of Carranza in violation of Penal Code section 207, subdivision (a). It was further alleged that the offense was a serious felony within the meaning of Penal Code section 1192.7, subdivision (c). Count 6 alleged that Albanes also committed the crime of the kidnapping of Cuevas in violation of Penal Code section 207, subdivision (a) and it was again alleged that the offense was a serious felony within the meaning of Penal Code section 1192.7, subdivision (c). Count 7, as did count 3, alleged that Albanes possessed for sale a controlled substance, cocaine, in violation of Health and Safety Code section 11351. It was again alleged that conviction of this offense required registration pursuant to Health and Safety Code section 11590. In addition, it was alleged that “the substance in the above charged offense exceeded over 1 kilogram by weight within the meaning of Health and Safety Code section 11370.4, subdivision (a)(1).” Count 8 alleged Albanes committed second degree robbery of Carranza in violation of Penal Code section 211. It was further alleged that the offense was a violent felony within the meaning of Penal Code section 667.5, subdivision (c) and a serious felony within the meaning of Penal Code section 1192.7, subdivision (c). Count 9 alleged the second degree robbery of Cuevas in violation of Penal Code section 211, that the offense was a violent felony within the meaning of Penal Code section 667.5,

subdivision (c) and a serious felony within the meaning of Penal Code section 1192.7, subdivision (c). Finally, in count 10 it was alleged that Albanes committed the crime of the voluntary manslaughter of Carranza in violation of Penal Code section 192, subdivision (a), “upon a sudden quarrel and heat of passion.” It was further alleged that the offense was a serious felony pursuant to Penal Code section 1192.7, subdivision (c).

As to counts 1, 2, 8, 9 and 10, it was alleged that “pursuant to subdivision (d)(1) of section 707 of the Welfare and Institutions Code, [Albanes] was a minor who was at least 16 years of age at the time of the commission of the . . . offenses.” With regard to counts 1, 2, 8, 9, and 10, it was also alleged that Albanes was a minor who was at least 14 years of age at the time of the commission of the offenses within the meaning of subdivision (d)(2)(A) of section 707 of the Welfare and Institutions Code. Finally, it was alleged as to counts 1, 2, and 10 that, in the commission and attempted commission of the offenses, a principal was armed with a handgun, “said arming not being an element of the . . . offense[s],” within the meaning of Penal Code section 12022, subdivision (a)(1).

Albanes decided to enter a plea rather than go to trial on the charges. Before she made the decision, the parties reached a “leniency agreement,” the terms of which were filed under seal. A case settlement was agreed to by the parties under the terms of which Albanes would plead guilty to counts 2 through 10 and a sentence of 30 years 8 months would be imposed.

After Albanes waived her right “to a jury trial, the right to confront and cross-examine the witnesses against [her], the right to use the processes of [the trial] court to subpoena witnesses in [her] own defense, and the right against self-incrimination,” the prosecutor indicated she wished to make a factual record before Albanes entered the plea. After being placed under oath, Albanes indicated that she had told the truth with regard to the 122-page offer.

Albanes testified that she had used Carranza as a “drug supplier” and that she had discussed this with Cardona. She had participated in the planning, and the execution of the plan to meet with Carranza on May 22, 2009. Albanes had driven the car to the designated intersection and knew that Cardona and Schmidt, both of whom were armed,

were in the trunk and planned to shoot Carranza. After driving to the intersection of Garrick and Dyer in Sylmar, Albanes met Cuevas, who had shown up with a package. Albanes had money “packaged to look like [she] had the full \$18,000 for the drug deal.” Cuevas opened the package he had brought to show Albanes. Neither he nor Carranza were armed with any type of weapon.

After Cuevas had opened the package, Albanes released the trunk door and Schmidt and Cardona got out of the car, brandishing their weapons. Schmidt and Cardona shot Carranza and, after he had gotten out of the car, shot at Cuevas. After shooting Carranza and Cuevas, Cardona and Schmidt got into the BMW and Albanes drove away. The group went to Cardona’s house to “split up the cocaine.”

After the prosecutor finished questioning Albanes, the trial court took her plea. He stated: “In this information PA064818, charging you in count 2 with a violation [of] Penal Code section[s] 664 and 187, subdivision (a), [attempted murder,] count 3, a violation of Health and Safety Code section 11351, . . . possession of a controlled substance for sale, count 4 a violation of Penal Code section 273, subdivision (a) . . . commonly known as child abuse; count[s] 5 and 6, [a] violation of Penal Code 207, subdivision (a), kidnapping, count 7, violation of Penal Code section 11351, possession of a controlled substance for sale, count[s] 8 and 9, Penal Code section 211, robbery in the second degree, and count 10, [a] violation of Penal Code section 192, subdivision (a), commonly known as voluntar[y] manslaughter, how do you plead?” Albanes responded, “Guilty.” The trial court then inquired: “And do you admit further as to count 7, the enhancement pursuant to Health and Safety Code section 11370.4, subdivision (a), [that] the item exceeded . . . one kilogram by weight, do you admit that enhancement?” Albanes responded, “Yes.” When the court asked if, with regard to counts 2 and 10, Albanes admitted “that a principal was armed with a firearm within the meaning of Penal Code section 12022, subdivision (a), subdivision (1), do you admit that?” Albanes again responded, “Yes.”

Defense counsel joined in the waivers and concurred in the plea. The trial court then, “[h]aving observed the demeanor of the defendant during the taking of [the] plea”

found that she had “knowingly, intelligently, understandingly, expressly and explicitly waived her rights [and] that she ha[d] freely and voluntarily made the plea”

The matter was set for sentencing in February 2011 and Albanes agreed that she could be sentenced by a judge other than the one who took her plea.

The trial court sentenced Albanes on Wednesday, May 25, 2011. For count 10, Albanes’s conviction of voluntary manslaughter in violation of Penal Code section 192, subdivision (a), the trial court imposed the upper term of 11 years in state prison. For Albanes admission that, during the commission of the crime, a principal was armed with a firearm in violation of Penal Code section 12022, subdivision (a)(1), the court imposed an additional, consecutive year. As to count 5, the crime of kidnapping in violation of Penal Code section 207, subdivision (a), the court imposed a consecutive term of five years. With regard to count 6, a second conviction of kidnapping in violation of Penal Code section 207, subdivision (a), the court imposed a second consecutive term of five years. For count 2, Albanes’s conviction of attempted willful, deliberate and premeditated murder, the court imposed one-third the mid-term, or two years four months, to run consecutively to the terms previously imposed. The trial court selected one-third the mid-term, or one year, for Albanes’s conviction of count 3, possession for sale of cocaine in violation of Health and Safety Code section 11351. With regard to count 4, child abuse in violation of Penal Code section 273a, subdivision (a), the court imposed a consecutive term of one-third the mid-term, or one year and four months.

The court selected a consecutive term of one-third the mid-term, or one year, for Albanes’s conviction of count 7, possession for sale of cocaine in violation of Health and Safety Code section 11351. For the weight enhancement alleged pursuant to Health and Safety Code section 11370.4, subdivision (a), the trial court imposed one-third the mid-term, or an additional one year in state prison. With regard to count 8, second degree robbery in violation of Penal Code section 211, the trial court imposed one-third the mid-term, or one year, the term to run consecutively to all others. For the second degree robbery in violation of Penal Code section 211 as pled to in count 9, the court again

imposed a consecutive term of one third the mid-term, or one year. In total, Albanes was sentenced to 30 years 8 months in prison.

The trial court awarded Albanes 719 actual days of presentence custody credit and 108 days of good time/work time, for a total of 827 days. The court then imposed nine \$200 fines payable to the victims' restitution fund (Pen. Code, § 1202.4, subd. (b)), nine \$200 suspended parole revocation restitution fines (Pen. Code, § 1202.45), nine \$40 court security fees (Pen. Code, § 1465.8), and nine \$30 criminal conviction fees (Gov. Code, § 70373). Albanes waived her right to a formal restitution hearing and agreed to pay, on the basis that she would be held jointly and severally liable with her codefendants, \$7,194 to the Victim Compensation Government Claims Board and \$306 to Carranza's family for burial costs.

The People moved to dismiss all remaining counts and allegations and the trial court granted the motion.

On July 21, 2011, Albanes filed a notice of appeal. As one of several issues Albanes raised, she asserted that she did not receive a fair sentence. Based on other issues raised, the trial court struck the notice, indicating that Albanes should have filed a certificate of probable cause. On November 9, 2011, this court reversed the trial court's order, indicating that a "certificate of probable cause is not required if the appeal is based on grounds that arose after the entry of the plea and . . . do not affect the plea's validity." (Pen. Code, §§ 1237, subd. (b) & 1237.5; Cal. Rules of Court, rule 8.304(b)(4)(B)). This court reinstated the notice of appeal filed on July 21, 2011, and the clerk of the superior court was directed to process it.

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed July 13, 2012, the clerk of this court advised Albanes to submit within 30 days any contentions, grounds of appeal or arguments she wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.