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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MELVONTAE JOHNQWAN
CENANCE,

Defendant and Appellant.

B281826

(Los Angeles County
Super. Ct. No. MA068629)

APPEAL from a judgment of the Superior Court of Los Angeles County, Stephen I. Goorvitch, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Michael C. Keller, Acting Supervising Deputy Attorney General, Timothy L. O'Hair, Deputy Attorney General, for Plaintiff and Respondent.

A jury convicted defendant Melvontae Johnqwan Cenace of two counts of second degree robbery (Pen. Code, § 211).¹ On appeal, defendant contends the trial court abused its discretion in denying his request for probation. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Close to midnight on April 25, 2016, a Domino's Pizza delivery driver went to a residential address in Lancaster to deliver a pizza. No one answered the door, however, and the delivery driver returned to his car. Defendant approached on the passenger side and told the driver the pizza was for him. The driver stepped out of the vehicle, only to be confronted by defendant holding what appeared to be a handgun. Defendant told the victim to give him the pizza and his money and leave. The Domino's driver was scared and did as instructed. He then called the Sheriff's Department.

About eight days later, on May 4, 2016, at around 9:00 p.m., a Pizza Hut delivery driver went to the same location to deliver "about a hundred dollars worth" of pizza, chicken wings, and cookies.²

As the delivery driver stepped out of his vehicle with the order, two men approached from the rear. One man appeared to be holding a gun and told the delivery driver to set the food down. He did so. The robber then told the victim to get another bag of food from the trunk of the vehicle and put it on the ground. The

¹ All statutory citations are to the Penal Code.

² The box containing the cookies said "Hershey" on the outside with a Pizza Hut logo; it was unique to Pizza Hut.

victim complied and gave the robber the money in his pocket as well.

The man without the weapon told the delivery driver to get out of there “before we shoot your ass up.” The victim feared for his life. He called 911 minutes later. The victim could not identify defendant as one of the robbers.

Officers investigating the Domino’s robbery determined the order was placed online from an I.P. address linked to defendant’s residence, which was located a few doors away from the delivery address. The night of the Pizza Hut crime, a Los Angeles County Sheriff’s deputy searched the trash bin at defendant’s residence and found a black pizza warmer bag with a cardboard box inside.

The following day, the deputy searched the residence; four males, including defendant, were present. He also found a pellet gun, a plastic container used for chicken wings, a box labeled “Hershey,” and identification cards. Dajuan King, who lived with defendant and was detained at the residence, later told police that defendant and “Dada”³ committed the May 4, 2016 robbery.

A jury convicted defendant on two counts of second degree robbery (§ 211). Defendant, who did not have a prior criminal record, sought probation. The prosecution contended defendant was not suitable for probation.

At sentencing, the trial court acknowledged defendant was statutorily eligible for probation under sections 667, subsection (c)(2), and 1170.12, subsection (a)(2). Although the robberies were strike convictions, both were charged in the same case and defendant did not use a deadly weapon in crime. The trial court

³ Dada is defendant’s older brother.

sentenced defendant to four years in prison (the midterm of three years) on count 1, with a consecutive one year (one-third the midterm) for count 1: “Since the defendant is statutory eligible for probation, I must first determine whether to place him on probation, considering the factors delineated in the Rules of Court. [¶] I have reviewed and considered the defendant’s brief on this issue asking that I place him on probation. I’m exercising my discretion, and I’m declining to place [defendant] on probation. [¶] My reasons for doing so are as follows: First, I believe this crime was serious. Robbery is a serious crime. These were two robberies, which evidenced a pattern of conduct to me. [¶] I will note that their sophistication in planning and how this was done. Pizza drivers were lured to locations, and they were robbed, using something that appeared to be a real gun. Although, it was not a real gun, in my view, that’s still an aggravating factor because these drivers did not know it was [sic] a real gun. He used something that appeared to be a real gun and placed the victims in fear. [¶] I will note that I considered the victims to be a little bit more vulnerable than another type of victim, because they work in an occupation where they can be lured to areas in which they are vulnerable and can be robbed. [¶] I would also note that the defendant has been convicted of two strikes, which is, essentially, what I meant when I referenced the pattern of conduct. But for the timing of this incident, if he had been convicted of one and then sentenced and then convicted of another, he would not be eligible for probation for this crime. [¶] Based on all of these factors, I’m exercising my discretion and deciding that I’m not willing to place him on probation for this crime.”

Defendant timely appealed.

DISCUSSION

Trial courts have broad discretion to grant or deny probation. (*People v. Sizemore* (2009) 175 Cal.App.4th 864, 879.) Defendant has the burden to demonstrate the trial court exercised its discretion in an “irrational or arbitrary” manner, and we will not reverse “merely because reasonable people might disagree. “An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.”” (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978.)

Section 1202.7 provides that safety of the public is the primary goal in determining whether to grant probation. Statutory factors a trial court must consider include, inter alia, the nature of the offense; the interests of justice, including the need for punishment; the loss to the victim; and the defendant’s needs. (*Ibid.*) Rule 4.414 of the California Rules of Court lists “[c]riteria affecting the decision to grant or deny probation.” Criteria relating to the crime that supported the denial of probation included the nature, seriousness, and circumstances of the crime; defendant’s role as an active participant, armed with a pellet or replica gun without the toy-designation orange tip; and vulnerability of the victims. (Cal. Rules of Court, rule 4.414(a).) Criteria relating to defendant himself that supported denial of probation included the danger he posed to others. (Cal. Rules of Court, rule 4.414(b).)

The trial court found the offenses were sophisticated based on the level of planning, including twice summoning unsuspecting victims to the scene of the crimes and threatening them with what appeared to be a real gun. In addition, the trial

court found the victims were vulnerable because they were lured to the robbery location under false pretenses.

Although defendant did not have a criminal record, he committed two serious crimes approximately one week apart, evidencing a pattern of conduct. Each crime constituted a strike violation; but for the prosecution of both offenses in one information, defendant would have been statutorily ineligible for probation. Moreover, no evidence suggested a pellet gun could not inflict serious injury. One of the victims testified he complied with the robbers' demands because he was afraid of being shot.

Defendant failed to meet his "heavy burden" to demonstrate the trial court abused its discretion in denying probation. (*People v. Aubrey* (1998) 65 Cal.App.4th 279, 282.)

DISPOSITION

The judgment is affirmed.

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DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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