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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT PADILLA,

Defendant and Appellant.

B244585

(Los Angeles County
Super. Ct. No. BA360224)

APPEAL from a judgment of the Superior Court of Los Angeles County. Sam Ohta, Judge. Affirmed.

Siri Shetty, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Mary Sanchez and Rene Judkiewicz, Deputy Attorneys General, for Plaintiff and Respondent.

Robert Padilla appeals from his conviction and sentence on four counts of extortion. He argues that the superior court erroneously admitted certain hearsay statements as declarations against penal interest. We conclude that any error was harmless, and we therefore affirm.

BACKGROUND

The information charged Padilla with four counts of extortion in violation of Penal Code section 520 (counts 3, 4, 6, and 7) and two counts of second degree robbery in violation of Penal Code section 211 (counts 2 and 5).¹ (Count 1 concerned a codefendant.) The information further alleged as to counts 2 through 7 that the crimes were committed for the benefit of, at the direction of, and in association with a criminal street gang with the specific intent to promote, further, and assist in criminal conduct by gang members, within the meaning of section 186.22, subdivision (b)(1)(C). The information also alleged as to counts 2 through 7 that Padilla had one prior conviction for a serious or violent felony within the meaning of section 1170.12, subdivisions (a) through (d), and section 667, subdivisions (b) through (i).

Padilla pleaded not guilty and denied the allegations. The charges against him and his codefendant were tried together but to separate juries. Padilla's jury found him not guilty on counts 2 and 5 (robbery) but guilty on counts 3, 4, 6, and 7 (extortion), and it found true the gang allegation as to the extortion counts. Padilla subsequently admitted the truth of the prior conviction allegation.

The court sentenced Padilla to 33 years to life in prison, calculated as follows: 14 years to life as to count 3; plus 5 years for the gang enhancement, to be served before the indeterminate sentence; plus a consecutive sentence of 14 years to life as to count 4; plus concurrent sentences of 14 years to life as to each of counts 6 and 7. The court also ordered Padilla to provide DNA samples, and the court imposed various statutory fines and fees. The court credited Padilla with 1,761 days of presentence custody (1,532 actual days, plus 229 days good time/work time). Padilla timely appealed.

¹ All subsequent statutory references are to the Penal Code.

Padilla and Freddy Juarez are members of the Indiana Dukes criminal street gang. The prosecution's theory at trial was that Padilla and Juarez, acting on behalf of the Indiana Dukes, extorted money from two employees of a smog check shop as payment for the gang's having killed the owner of the shop at the request of Remigio Nieblas, also known as "Juero" or "Guero." (Nieblas is not a member of the Indiana Dukes.) Luis Hernandez was the true owner of the Nayarit Smog Shop, but Hernandez had placed formal ownership of the shop in the name of Nieblas, one of the shop's employees. According to Hernandez's girlfriend, the shop was in Nieblas's name so that Hernandez "could keep money away from his estranged kids." The prosecution introduced evidence tending to show that Nieblas was dissatisfied with the pay he was receiving from Hernandez and that he sought to have members of the Indiana Dukes street gang kill Hernandez, presumably so that he (Nieblas) would then own the shop.

Hernandez was shot to death on July 4, 2009. After Hernandez's death, Padilla and various associates stopped by the shop almost daily and spoke with Nieblas.

On July 31, 2009, Padilla and Juarez arrived at the shop accompanied by two women. Padilla told two of the shop's employees, Walter Ernesto Salguero and Michael Salazar, to come into the shop's office. When all four men were inside the office, Padilla told Salguero and Salazar that they had to pay him \$500 that day, and \$500 per week thereafter. Salguero and Salazar recognized Padilla and Juarez as gang members and feared for their safety if they did not pay. Padilla and Juarez returned later that day, and Salguero gave Padilla \$500 (\$300 from the shop, plus \$100 each from Salguero and Salazar).

Salazar reported the incident to the police, who consequently stationed a task force near the smog shop on August 7, 2009. Padilla arrived at the shop on that day, and Salguero gave him \$250, which Salguero believes came from Salazar. (Through Padilla's wife, Salazar had previously negotiated that week's payment down to \$250.) The police then arrested Padilla.

DISCUSSION

At trial, the prosecution sought to play for the jury a portion of a recording of a jailhouse conversation between Juarez and another individual. Padilla objected that it was hearsay, but the prosecution argued, and the superior court agreed, that the recording was admissible as a statement against Juarez's penal interest.

The transcript of the admitted portion of the recording reads as follows:

"JUAREZ: All right. So, Estella [. . .] [Other speaker]: Damn, fool. JUAREZ: Don't[] even worry about it homeboy, [w]e gonna, we'll ride it all the way to the box, fuck that. But Estella's primo, [Nieblas], had a shop in Lincoln Heights, a Smog Check, but it was dirty. So, he told me – [Nieblas] was like, 'I'm going to put it under [Padilla]'s name. So the shop is your shit. Here's the keys. (Unintelligible) run my, my shop.' So, we told him we'd do that, and it was great bread, there was, like, bread every week. [¶] So, we got the shop and we still got it, but it's – we can't get it no more because the Feds are on it[.] [Other speaker]: So – because extortion's a federal case. JUAREZ: Yeah, it's a federal case. [Other speaker]: Why do they got him here? JUAREZ: I don't know. [Other speaker]: So, he's fighting life? JUAREZ: No, he was fighting life, but they threw him a deal, I think thirty or forty years, something like that. That's why he fired his lawyers, PD, and he was fighting his own case. (Unintelligible). [Other speaker]: Damn, that's crazy."

On appeal, Padilla argues that the court abused its discretion by admitting the recording, because Juarez's statements were not against his penal interest. We conclude that, assuming for the sake of argument that, at least in part, the recording was erroneously admitted, the error was not prejudicial.

The recorded conversation has virtually no probative weight or prejudicial effect in support of the extortion charges. Juarez said nothing about extortion. Juarez's interlocutor made one reference to extortion, but that reference did not directly implicate Padilla or Juarez (as opposed to someone else at the smog shop) in the extortion, and Juarez did not confirm the reference to extortion (he confirmed only that "it's a federal case"). Juarez's statements do not even fit the prosecution's theory of the facts—

according to Juarez’s recorded statements, Nieblas had a shop that was antecedently “dirty” for some unspecified reason, and Nieblas put the shop in Padilla’s name and asked him and Juarez to run it, which they did.

The extortion charges were supported by overwhelming evidence—both victims, Salguero and Salazar, testified at trial and described the extortion of July 31 and August 7 in detail. Given the negligible probative value of Juarez’s recorded conversation, it is not reasonably probable that Padilla would have obtained a more favorable result if the recording had been excluded. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

DISPOSITION

The judgment is affirmed.

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ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.