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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

SIDNEY MAIDEN,

Defendant and Appellant.

F064016

(Super. Ct. No. BF134357A)

**OPINION**

APPEAL from a judgment of the Superior Court of Kern County. Charles R. Brehmer, Judge.

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

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna and William K. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury found appellant Sidney Maiden guilty of carjacking (Pen. Code, § 215, subd. (a)),<sup>1</sup> assault with a firearm (§ 245, subd. (b)), attempted carjacking (§§ 664/215,

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise indicated.

subd. (a)), attempted first degree robbery (§ 664/212.5, subd. (b)), second degree robbery (§ 212.5, subd. (c)), possession of a firearm by a felon (§ 12021, subd. (a)(1)), and active participation in a criminal street gang (§ 186.22, subd. (a)). True findings were returned with respect to gang-related enhancements (§186.22, subd. (b)(1)) and allegations of firearm use (§§ 12022.5, subd (a), 12022.53(b), (e)(1).) Maiden was sentenced to 25 years to life in prison.

Three issues are raised in this appeal, none of which have merit. A challenge is made as to the sufficiency of evidence in support of Maiden's convictions for attempted first degree robbery, second degree robbery, and three counts of assault with a firearm. There are also allegations of prosecutorial misconduct. Finally, Maiden claims section 186.22, subdivision (a), is unconstitutional under the void for vagueness doctrine. We affirm the judgment.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Maiden's convictions arise from a series of events that occurred in Bakersfield on October 27, 2010. At approximately 8:30 p.m., Fernando Roman was carjacked at gunpoint in the parking lot of Valley Plaza Mall. The perpetrator forced Mr. Roman out of his green minivan, took his cell phone, and drove off in the vehicle.

Shortly before 10:00 p.m., two men approached Goben and Veronica Vargas while they were using a drive-through automated teller machine located on Oswell Street. One of the men wore a mask. The masked individual pointed a gun at Veronica Vargas and demanded she lower the passenger side window of the Vargas' automobile. The second man tried to gain entry from the opposite side of the car. Goben Vargas quickly shifted into drive and "hit the gas," allowing the couple to escape.

Within minutes of the encounter on Oswell Street, a similar incident occurred nearby on Auburn Street. Two men accosted Marilyn Aldana and Laura Sanchez in the parking lot of La Mina Restaurant and stole their purses at gunpoint. The men fled

towards a green minivan occupied by a third individual. The person inside opened the door for the robbers and the car sped off after they jumped inside.

Fernando Roman's minivan was recovered by police around midnight. Officers searched the vehicle and found several items belonging to Marilyn Aldana and Laura Sanchez. The recovered items included credit cards, debit cards, and cosmetics.

Further investigation led police to the home of Maiden's cousin, Dayshnay Fountain. Two suspects, Stephan Cartwright and Michael Russell, were apprehended inside of Ms. Fountain's apartment. A search of the residence uncovered a semi-automatic handgun, a face mask, a digital camera and cell phone belonging to Laura Sanchez, and clothing matching the victims' descriptions of the robbers.

Ms. Fountain reportedly told police that Cartwright and Russell had been at her apartment earlier in the evening, but left at some point with Maiden. She said Maiden arrived in a vehicle she did not believe was his, and all three men departed in that vehicle. Police began searching for Maiden based on the information provided by Ms. Fountain.

At a field show-up conducted outside of Ms. Fountain's apartment, victims Marilyn Aldana and Laura Sanchez identified Cartwright and Russell as the men who had robbed them. Mr. and Mrs. Vargas could not positively identify the suspects but told police both men matched the general appearance of their attackers in terms of height, weight, and build. Goben Vargas also said that the gun, mask, and a brown sweatshirt seized from Ms. Fountain's apartment were all the same as those worn and used by the perpetrators.

Meanwhile, Fernando Roman identified Maiden from a photographic lineup. Maiden was located and taken into custody in the early morning hours of October 28, 2010. He was found in possession of Mr. Roman's cell phone at the time of his arrest.

On June 1, 2011, the Kern County District Attorney filed an amended criminal information charging Maiden with carjacking (Count 1), assault with a firearm (Counts 2, 6, 9 & 10), attempted carjacking (Count 3), attempted first degree robbery (Counts 4 &

5), second degree robbery (Counts 7 & 8), possession of a firearm by a felon (Count 11), and active participation in a criminal street gang (Count 12). The amended information contained enhancement allegations for gang association (Counts 1 through 11), personal use of a firearm (Counts 1, 2, 3, 4, 5, 7, 8 & 12) and firearm use liability as a principal in the commission of a felony offense (Counts 3, 4, 5, 7 & 8). Further enhancements were alleged pursuant to sections 667 and 667.5 but were subsequently dismissed at the request of the prosecutor.

The amended information charged Stephan Cartwright and Michael Russell with the same crimes alleged under Counts 3 through 12. Maiden was the only person accused of carjacking and assaulting Fernando Roman under Counts 1 and 2. The trial court later granted a motion to sever the trial of Russell from that of his co-defendants. Maiden and Cartwright were tried jointly in a two-week jury trial that began in August 2011.

All five victims testified as prosecution witnesses at Maiden's trial, as did several officers from the Bakersfield Police Department. Officer Matthew Gregory served as the prosecution's gang expert. Among other testimony, Officer Gregory provided background information regarding the criminal street gang known as the Bloods and opined that Maiden and Cartwright were active members of the gang.

Dayshnay Fountain was called as a prosecution witness, but she contradicted police testimony by denying Maiden had come to her home on the night in question. She also denied telling investigating officers that Cartwright and Russell were picked up by Maiden in a vehicle. According to Ms. Fountain, Cartwright left her apartment on foot at approximately 9:50 p.m. and Russell departed shortly after 10:00 p.m.

Maiden's sister, Shataree Scoggins, was called as a defense witness. She testified Maiden was at home with her and several family members on the evening of October 27, 2010 and had fallen asleep on a couch in the living room by 9:30 p.m. His sister also claimed that Russell, who is her cousin, gave her Fernando Roman's stolen cell phone earlier that day, "before it even became nighttime." Ms. Scoggins left the phone on a

coffee table next to Maiden before she went to bed, thus explaining why it was found in his immediate vicinity at the time of Maiden's arrest.

Maiden was acquitted of attempted carjacking with respect to Goben and Veronica Vargas as alleged in Count 3. He was convicted on all remaining counts. The jury returned true findings on the gang enhancement allegations for all convictions under Counts 1 through 11 and for personal use of a firearm under Counts 1, 2, and 12. Firearm enhancement allegations based on his participation as a principal in the offenses charged under Counts 4, 5, 7 and 8 were also found to be true.

The trial court sentenced Maiden to an indeterminate term of 15 years to life for carjacking under Count 1, plus a 10-year consecutive sentence as required by section 12022.53, subdivision (b), for personal use of a firearm. Concurrent sentences ranging from 4 years to 17 years were imposed for the convictions and enhancements under Counts 4, 5, 7 and 8. Additional sentences imposed under Counts 2, 6, 9, 10, 11 and 12 were stayed pursuant to section 654.

## **DISCUSSION**

### **I. The Convictions are Supported by Substantial Evidence**

Maiden does not dispute the sufficiency of evidence in support of his convictions relating to the carjacking of Fernando Roman, his unlawful possession of a firearm, or active participation in a criminal street gang. He contends the requisite proof was lacking as to the charges under Counts 4 through 10, i.e., the crimes committed against Marilyn Aldana, Laura Sanchez, and the Vargas family. More specifically, Maiden asserts “[t]here was no evidence that [he] was present during any of those crimes, or that he actively encouraged, aided or abetted in their commission.” His position is untenable.

There are no missing links in the chain of circumstantial evidence connecting Maiden to the crimes for which he was convicted. While some links may have been weaker than others, the evidence was sufficient to support multiple theories of liability, including his role as the driver who transported Cartwright and Russell to and from the

locations where the offenses occurred. Maiden's arguments to the contrary ignore pertinent trial testimony and the applicable standard of review.

"A substantial evidence inquiry examines the record in the light most favorable to the judgment and upholds it if the record contains reasonable, credible evidence of solid value upon which a reasonable trier of fact *could* have relied in reaching the conclusion in question." (*People v. Barnwell* (2007) 41 Cal.4th 1038, 1052, italics in original.) Reversal is not warranted unless the evidence is insufficient to support the verdict under any hypothesis. (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) This standard applies in cases, such as this one, where the prosecution relies primarily on circumstantial evidence. (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

"Although it is the jury's duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant's guilt beyond a reasonable doubt." (*People v. Kraft* (2000) 23 Cal.4th 978, 1053-1054.) If the jury rejects the interpretation pointing to innocence, and there is competent evidence to support a finding of guilt as the more reasonable conclusion, we are bound by the jury's decision. (*People v. Towler* (1982) 31 Cal.3d 105, 118.) We cannot reweigh the evidence, reinterpret the evidence, or substitute our own judgment for that of the jury. (*People v. Baker* (2005) 126 Cal.App.4th 463, 469.)

Maiden emphasizes the enhancement allegations for personal use of a firearm under Counts 4 through 10 were found to be untrue. He thus concludes "that the jury did not convict him as a perpetrator, but as an aider and abettor in those offenses." His reasoning on this point is sound, but it does not support any arguments for reversal.

Aiding and abetting liability exists "when a person who does not directly commit a crime assists the direct perpetrator by aid or encouragement, with knowledge of the perpetrator's criminal intent and with the intent to help him carry out the offense." (*People v. Miranda* (2011) 192 Cal.App.4th 398, 407 (*Miranda*)). One who "promotes,

encourages or instigates the commission of the crime” may be characterized as an aider and abettor. (*People v. Cooper* (1991) 53 Cal.3d 1158, 1164.) Likewise, any person who is “present for the purpose of diverting suspicion, or to serve as a lookout, or to give warning of anyone seeking to interfere, or to take charge of an automobile and to keep the engine running, or to drive the getaway car and to give direct aid to others in making their escape from the scene of the crime, is a principal in the crime committed.” (*People v. Swanson-Birabent* (2003) 114 Cal.App.4th 733, 743-744, internal quotation marks omitted.)

The decision to aid and abet may occur in the spur of the moment, and the assistance provided need not be a substantial factor in the offense. (*People v. Nguyen* (1993) 21 Cal.App.4th 518, 532.) “[A]ny person concerned in the commission of a crime, however slight that concern may be, is liable as a principal in the crime.” (*Ibid.*, citations omitted.) Companionship and conduct before and after the offense are relevant considerations in the liability analysis. (*People v. Haynes* (1998) 61 Cal.App.4th 1282, 1294.)

Based on the facts and circumstances recounted above, there was substantial evidence linking Cartwright and Russell to the crimes at issue. Maiden had close ties to both individuals. As to Cartwright, the prosecution established a common membership in the Bloods street gang. There was also evidence of Russell’s membership in the Bloods, as well as a familial relationship between him and Maiden.

The prosecution’s evidence indicated Cartwright and Russell were traveling in a vehicle with Maiden prior to committing the crimes alleged in Counts 4 through 10. The attempted robbery of Goben and Veronica Vargas, and the offenses involving Marilyn Aldana and Laura Sanchez, occurred in very close proximity of time and location. The robbers were seen fleeing in a green minivan occupied by a third individual. It was up to the jury to decide whether that third person was Maiden, or a nameless perpetrator who somehow managed to evade capture and suspicion.

The jury reasonably could have inferred a scenario in which Maiden carjacked the minivan and then met up with his fellow gang members, encouraging them to commit additional crimes with him and/or with his assistance. Jurors apparently believed Maiden used the stolen vehicle to drive Cartwright and Russell to and from the locations where the subsequent offenses occurred. Assuming the role of a getaway driver, Maiden logically would have served as a lookout while his cohorts engaged in their crime spree. This hypothesis is supported by the testimony of Laura Sanchez, who said the man in the green minivan was waiting for Cartwright and Russell and helped facilitate their escape. The cumulative impact of the evidence was sufficient to allow the jury to conclude, without doubt, that Maiden aided and abetted the crimes charged under Counts 4 through 10.

## **II. No Basis for Reversal on Grounds of Prosecutorial Misconduct**

Maiden argues for complete reversal of the judgment on grounds of prosecutorial misconduct. The misconduct allegedly occurred during closing argument and rebuttal. Maiden contends the prosecution argued facts not in evidence by stating that “Mr. Maiden’s name came up” while police were at the home of Dayshnay Fountain. Maiden further claims his constitutional rights were violated when the prosecution highlighted the fact that certain individuals did not testify in his defense at trial.

The record disproves the first contention. Officer Nicole Shirer testified regarding her conversations with Dashnay Fountain on October 28, 2010 and Ms. Fountain’s reaction to the discovery of a mask, a gun, and stolen property inside of her apartment: “She became very upset. She began to shake and to cry... She said at about 7 o’clock in the evening, Sidney – a subject she told me was Sidney Maiden arrived at her residence. And shortly thereafter, Cartwright – Mr. Cartwright, Mr. Russell and Mr. Maiden all left together.”

The prosecution did not resort to matters outside of the record by arguing Maiden's name "came up" and "somebody in that household mentioned him." Moreover, according to the testimony of Officer Shirer, the statements were accurate.

The remaining arguments ultimately pertain to the testimony of Maiden's sister, Shataree Scoggins. As previously discussed, Ms. Scoggins testified regarding Maiden's whereabouts on the evening of October 27, 2010. Maiden had allegedly fallen asleep by 9:30 p.m. inside a home occupied by several family members, including his mother. Ms. Scoggins also claimed to have told their mother, at the time of Maiden's arrest, that the cell phone belonging to Fernando Roman was given to her by Michael Russell. Her mother allegedly asked why she did not explain this to the police officers, to which Ms. Scoggins replied, "They didn't ask me."

The prosecution remarked upon the believability of Ms. Scoggins' story during closing argument and the fact that Maiden's mother did not testify in her son's defense. Advance notice was provided to the trial court and defense counsel that such comments would be made. When closing arguments were presented, the trial court reminded jurors the defense had no burden of proof and was thus under no obligation to produce witnesses. The prosecution acknowledged this as well, albeit in a less formal manner ("I have the burden folks....They don't have to prove a damn thing").

We find no legal error in the prosecutor's remarks. "[A] prosecutor may comment on the absence of logical witnesses to rebut the People's or corroborate the defendant's case." (*People v. Stevens* (2007) 41 Cal.4th 182, 210.) In light of his sister's testimony, Maiden's mother was a logical witness. "[I]t is neither unusual nor improper to comment on the failure to call logical witnesses." (*People v. Gonzales* (2012) 54 Cal.4th 1234, 1275.) This principle vitiates Maiden's claim of prosecutorial misconduct.

The case of *People v. Gaines* (1997) 54 Cal.App.4th 821 (*Gaines*), on which Maiden relies, is inapposite. In *Gaines*, the defendant took the stand and offered an alibi defense, identifying a particular witness in the courtroom who was expected to testify to

facts corroborating his version of the events. (*Gaines, supra*, 54 Cal.App.4th at pp. 823-824.) The witness did not end up testifying. (*Id.* at p. 824.)

During rebuttal, the prosecutor speculated as to what the absent witness would have said had he testified, asserting the testimony would have contradicted that of the defendant. The prosecutor also accused defense counsel of essentially hiding the witness and obstructing the prosecution's ability to call him for impeachment purposes. (*Gaines, supra*, 54 Cal.App.4th at pp. 824-825.) The appellate court found these arguments went beyond the evidence in the record and rose to the level of prosecutorial misconduct. (*Id.* at pp. 825-826.)

The *Gaines* opinion holds "that a prosecutor commits misconduct when he purports to tell the jury why a defense witness did not testify and what the testimony of that witness would have been." (*Gaines, supra*, 54 Cal.App.4th at p. 822.) Such behavior did not occur in this case. The prosecution limited its comments to evidence in the record and permissibly noted Maiden's decision not to call logical witnesses.

### **III. Section 186.22 is not Unconstitutionally Vague**

Section 186.22, subdivision (a), proscribes active participation in a criminal street gang. Maiden challenges the constitutionality of the statute, arguing it is void for vagueness because the term "gang" and the concept of active participation are ambiguous. In *People v. Castenada* (2000) 23 Cal.4th 743 (*Castenada*), the California Supreme Court considered the meaning of the phrase "actively participates in any criminal street gang," as used in section 186.22. The high court concluded that the statute is not unconstitutionally vague because "our Legislature has made it reasonably clear what conduct is prohibited" and because nothing in the statutory language would encourage "arbitrary or discriminatory law enforcement." (*Castenada, supra*, 23 Cal.4th at p. 752, citations omitted.)

Maiden acknowledges that we are bound by the holding in *Castenada* but submits he is raising the issue to preserve federal appellate review. We would note for his benefit

that the Eastern District of California has rejected challenges to section 186.22 made on grounds of unconstitutional vagueness. (See, e.g., *Williams v. Evans* (E.D. Cal. 2009) 2009 U.S. Dist. LEXIS 47310, \*85-89, 2009 WL 1460832, \*30-31.) In any event, Maiden's argument is devoid of merit under controlling decisions of the California Supreme Court.

**DISPOSITION**

The judgment is affirmed.

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Gomes, Acting P.J.

WE CONCUR:

\_\_\_\_\_  
Kane, J.

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Detjen, J.