People v. Valle

2002 | Cited 0 times | California Court of Appeal | July 10, 2002

I. Statement of the Case

Defendants Eduardo Valle (Valle) and Ricardo Hernandez (Hernandez) appeal from judgments entered after a jury found both guilty of second degree murder, found Valle guilty of two counts of assault with a deadly weapon and that he was personally armed with a knife and inflicted great bodily injury, and found Hernandez guilty of three counts of assault with a deadly weapon.

On appeal, defendants claim there is insufficient evidence to support their convictions for second degree murder. They claim the court erred in failing to give CALJIC No. 3.02, which explains the natural-and-probable-consequences doctrine of aiding and abetting. They claim the court erred in giving an instruction on second degree felony murder. And last, Hernandez claims that the delay in prosecuting him on a separate, unrelated charge of assault denied him due process of law.

We reject these claims and affirm the judgments.

II. Facts

A. The Assault on October 31, 1997 [1]

At around 8:00 p.m., on October 31, 1997, Ricky Garcia and several friends, including Eloy Beltran, Juan Esquivel, and Eric Esquivel, were out trick-or-treating and stopped behind a building on Monterey Street in Gilroy. Garcia was wearing a red jacket and burgundy shirt. He, Beltran, and the Esquivels were members or associates of Norteño gangs, which, among other things, claim red or burgundy as their color. At one point, Garcia heard someone say that "they [have] guns." He and his friends scattered, but Garcia later found himself surrounded by four males. Three wore beanie hats over their faces. The four attacked Garcia, saying "sur," "Eighth Street," and "Trece," words associated with rival Sureño gangs. Eventually Garcia escaped, but he suffered stab wounds in his back and arm and a punctured lung. At the hospital and later at the preliminary hearing, Garcia was positive that Hernandez stabbed him. Garcia also identified Hernandez from a photo line-up. He said

that at the time of the attack, Hernandez, who was also known as "Kiki," was wearing a Dallas Cowboy jersey. [2] Hernandez thought that the attack was gang-related.

Later at trial, Garcia said he was not sure of his identification. However, he said he had told the truth when he previously identified Hernandez to the police and at the preliminary hearing. He explained that he changed his story because he did not want to testify against Hernandez. He further explained that when he and Hernandez were together at Juvenile Hall, Hernandez had called him a "rat." Garcia denied that he took this as a threat.

B. The Murder and Assaults of September 19, 1998

On September 18, 1998, sometime after 10:00 p.m., George Molina and Arthur and Walter Martinez walked to a residence at 8090 Springdale Court in Gilroy. Molina entered, and Arthur and Walter stood outside. All three were wearing articles of red clothing. Minutes later, defendants and a third man approached Walter and Arthur. Arthur and Valle said "what's up" to each other. Molina came back outside, and at that point, defendants and their friend attacked Molina, Arthur, and Walter. Arthur suffered stab wounds in the stomach, arm, head and buttocks. Molina was stabbed in the upper chest, stomach, and forearm and suffered a collapsed lung. Walter was stabbed in the chest and later died.

Molina testified that someone the size of Valle attacked him, but he could not see who it was. Arthur testified that he tried to help Molina, but Valle stabbed him and then ran. Arthur chased after him but stopped because he was bleeding and saw a police officer. Neither Arthur nor Molina ever saw a knife, and they did not have knives themselves.

Elizabeth Centeno, Edelmira Mendoza, Carlos Ybarra, and Tony Zepeda lived at 8090 Springdale Court. They testified that earlier in the day, there had been a fight between the residents of 8090 Springdale, including Ybarra and Alfredo Zepeda, and their neighbors at 8070 Springdale. As a result of that fight, Alfredo was arrested.

Later than night when Mendoza came home, Centeno, Ybarra, and Tony Zepeda told her about the fight and about Alfredo's arrest. A short time later, Molina, Arthur, and Walter arrived. Ybarra then saw defendants and a third person approach the house. Ybarra and Tony also identified defendants. Within moments, Valle attacked Molina. Molina fought back but eventually fell down. Defendants and their friend fled, and Mendoza, Ybarra, and Tony chased them.

As this incident was happening, Officer Nestor Quiones of the Gilroy Police Department was investigating a call from Valle's mother about slashed tires and suspects heading toward Springdale Court. He noticed a pickup truck with slashed tires and a man-Valle's father-standing outside, pointing toward Springdale Court. He then saw Valle running his way and detained him. Valle was scared and said people were fighting at the end of the court and that he was chasing people who had

been slashing tires. Quiones saw that Valle had been stabbed. Valle kept trying to leave, but Quiones made him sit by the curb. [3] During this time, Quiones observed two young Hispanic males running in front of the houses on Springdale Court. Several other people, including Mendoza, approached and started yelling and challenging Valle. Mendoza told Quiones that Valle had been fighting at her house. Valle said, " `Shut up you stupid bitch. You don't know shit.' " Quiones ordered the others to leave.

On September 19, Officer Steve Baty of the Gilroy Police Department arrested Hernandez. In a taped interview, Hernandez denied participating in the fight on Springdale Court. He said he was with a man named Valentine watching a boxing match on television. At around 8:30 or 9:00 p.m., after the match, Hernandez went home and straight to bed. He said that his mother checked on him at around 11:00 p.m. that night. His mother woke him the next morning at 9:00 a.m.

Baty went to the house where Hernandez said he had watched the fight. A resident there was unable to identify Hernandez from a photo line-up. Others at the house recalled that Valentine had been there with some friends. Baty tried but was unable to locate Valentine.

Police also interviewed Tony and Ybarra. Tony reported that he recognized all three assailants, one of whom was named Kiki. He said that all three lived near each other on Forest Street. Ybarra also said that one of the men was named Kiki.

Monica Riojas lives at 8091 Springdale Court across from the Zepeda residence. She had dated Hernandez in the past, but at trial testified that she and he were just friends. However, after Hernandez was arrested, she wrote letters to him and, among other things, professed her love.

She testified that she had seen the earlier fight that resulted in Alfredo's arrest. Later that day, she was talking to Hernandez in front of his house, when a group of young people walked by, and one yelled "fucking scraps," which is an insult used by Norteños against Sureños. Hernandez wanted to find out who it was, but Riojas persuaded him not to. She said three of those people slashed tires as they made their way toward Springdale Court. [4] Riojas left Hernandez, and as she went home, she saw the same three people go to the Zepeda residence. She paged Hernandez, but he did not respond. A short time later, she saw Valle and two others go to the Zepeda residence. They yelled "what's up" to the three people, and then all six began to fight. After a while, Valle and the two others fled. Twenty minutes later, Hernandez phoned Riojas, and she told him about the fight.

Riojas testified that Hernandez was not one of the other two men with Valle. She said that after she became involved in the case, Valle's family and others threatened her. She also reported that her brother was beaten, and her mother's car was vandalized.

The Defense

Only Hernandez presented evidence in defense, which was that he was not present during the September 19 incident. Mark Moriyama, a criminalist at the Santa Clara County Crime Lab, examined the scene of the crime and testified that there were many drops of blood on the pavement. Other evidence indicated that many of the drops were the result of the earlier fight there. Given the number of drops, one would have had to be careful walking around the area in order to avoid stepping on a drop. The shoes Hernandez was wearing when arrested revealed no traces of blood on the soles.

III. Sufficiency of the Evidence of Second Degree Murder

Defendants claim there is insufficient evidence to support their convictions for murdering Walter. Noting that the jury did not find true allegations that they personally used a knife to kill him, defendants reason that their liability must have been based on a finding that they aided and abetted the actual murderer. However, they claim the evidence does not support such a finding.

We agree that the verdicts and special findings indicate that defendants were convicted of aiding and abetting Walter's murder. However, we find the evidence sufficient to support their convictions on this theory of liability.

The court instructed the jury on aiding and abetting, explaining that defendants were guilty as principals if they knowingly and intentionally encouraged or facilitated the perpetrator's unlawful acts. The court then defined first and second degree murder as well as voluntary and involuntary manslaughter. With respect to second degree murder, the court explained that it required a finding of malice and defined both express and implied malice. The court stated that implied malice does not involve a specific intent to kill. Rather, implied malice exists when the killing is the result of an intentional act, the natural and probable consequences of that act are dangerous to human life, and the act was deliberately performed with knowledge of but conscious disregard for such danger. (See CALJIC No. 8.11.)

Viewed in the light most favorable to the verdicts (see People v. Rodriguez (1999) 20 Cal.4th 1, 12), the evidence reveals that on September 18, Molina, Walter, and Arthur, among others, walked by defendant Hernandez, hurled a gang insult at him, and slashed the tires on Valle's father's truck. They continued walking and ultimately congregated outside 8090 Springdale Court. Valle, Hernandez, and a third person followed them to Springdale Court. At least Valle and the third person were armed with knives. Within moments of arriving, defendants and their confederate attacked Molina, Walter, and Arthur, stabbing all three of them, and killing Walter.

Given this evidence and the expert testimony about the underlying animosity between Norteño and Sureño gangs, the jury could have reasonably found that Valle, Hernandez, and their confederate intended to retaliate against Molina, Arthur, and Walter by violently attacking them. The jury could further have found that all of them knew before the attack, or at least once it commenced, that they

had knives, intended to use them, and were using them to stab their victims. Under the circumstances, therefore, the jury could reasonably conclude that defendants and their confederate intended to attack Walter, they knew their confederate was stabbing him in a way that was dangerous to his life in conscious disregard for that danger, and they intended to encourage or facilitate their confederate's conduct. In other words, the jury could reasonably convict defendants of aiding and abetting second degree murder-a killing with implied malice. (Cf. People v. Woods (1991) 226 Cal.App.3d 1037; People v. Gonzales (1970) 4 Cal.App.3d 593.)

Noting that they were acquitted of attempted murder of Molina and Arthur, defendants assert that the jury necessarily found that they did not intend to kill anyone. Thus, the jury could not have found that they specifically intended to aid and abet Walter's killing. We disagree. The charges of attempted murder required the jury to find a specific intent to kill. Thus, the acquittals reflect only that one or more jurors had a reasonable doubt about whether they harbored the specific intent to kill or express malice. The acquittals do not preclude a finding that defendants encouraged or facilitated their confederate's act of stabbing Walter with conscious disregard for his life.

We also reject defendants' reliance on U.S. v. Andrews (9th Cir. 1996) 75 F.3d 552. There, the defendant and a confederate armed themselves and went to attack a particular person, with whom one of them had previously argued. However, the confederate then shot two different people, killing one of them. The court reversed the defendant's murder conviction as an aider and abettor because there was no evidence the defendant knew his confederate was going to shoot anyone other than the person involved in the argument. Andrews is distinguishable because here, the record establishes that defendants and their confederate intended to attack Molina, Arthur, and Walter and thus knew that Walter was a potential victim.

Defendants next point out that the trial court did not give CALJIC No. 3.02, which sets forth the natural-and-probable-consequences doctrine of aiding and abetting. The instruction explains that an aider and abettor is liable not only for the offense he or she intended to aid and abet but also for offenses that are natural and probable consequences of the originally intended offense. [5] Defendants argue that since this instruction was not given, the jury could not have relied on it. Defendant's further argue that since the jury did not rely on this doctrine, this court cannot rely on it to uphold their convictions, even if there is evidence to support it. To do so, defendants submit, would deny them the right to have the jury decide every element and material fact essential to guilt, and in particular that Walter's murder was the natural and probable consequences of the assault with a deadly weapon. We are not persuaded.

The natural-and-probable-consequences doctrine "is based on the recognition that `aiders and abettors should be responsible for the criminal harms they have naturally, probably and foreseeably put in motion.' " (People v. Prettyman (1996) 14 Cal.4th 248, 260, quoting People v. Luparello (1986) 187 Cal.App.3d 410, 439.) The aider and abettor need not have actual advance knowledge or intent concerning the additional harm for which he or she may be held liable. Rather, criminal knowledge

and intent are constructively imputed because the additional harm is reasonably foreseeable. Thus, in addition to the general instructions on aiding and abetting, CALJIC No. 3.02 requires two additional findings: did the perpetrator commit a crime different from that originally intended; and if so, was that crime a natural and probable consequence of the intended crime.

Here, the jury was not asked whether defendants knowingly and intentionally encouraged the target offense of assault with a knife and if so, whether Walter's murder was the natural and probable consequences of that specific offense. Indeed, the prosecutor did not even argue this theory of consequential vicarious liability. However, this theory was not the sine qua non for finding defendants guilty of murder. Rather, the court's instructions provided a more direct theory: aiding and abetting second degree murder, i.e., an unlawful killing with implied malice, and this was the theory argued by the prosecutor.

We further point out that the court's instructions asked, in effect, (1) whether Walter's death was the natural and probable consequences of an act-i.e., the stabbing-dangerous to human life; (2) whether the act was committed with conscious disregard for this danger; and (3) whether defendants knowingly and intentionally encouraged or facilitated this particular conduct. The verdicts necessarily reflect a finding that Walter's death was the natural and probable consequences of the stabbing, which defendants knowingly and intentionally aided and abetted. Thus, the verdict necessarily includes a finding that is essentially the same as the finding that would have been required under CALJIC No. 3.02. Consequently, we reject the claim that the failure to give CALJIC No. 3.02 removed an element of the offense from the jury's consideration or otherwise denied defendants the right to have the jury determine all issues of fact relevant to guilt and innocence. [6]

Indeed, the implicit findings of the jury go beyond what would have been required under the natural-and-probable-consequences doctrine. Here, the jury did not just find that the killing was the natural and probable consequences of an assault that defendants encouraged or facilitated; the jury also found that defendants knowingly and intentionally encouraged or facilitated a fatal stabbing with conscious disregard for the life of the victim. Thus, the jury found defendants' guilty under instructional requirements more stringent than those set forth in CALJIC No. 3.02.

Last, defendants' reliance on People v. Prettyman, supra, 14 Cal.4th 248 is misplaced. Prettyman holds that when the prosecution relies on the natural-and-probable-consequences doctrine of aiding and abetting and the court instructs on this theory, it must also instruct on the target offense or offenses that the defendant aided and abetted so that the jury has a basis upon which to determine whether the ultimate crime was a natural and probable consequence. (Id. at pp. 264- 269.) Here, the court instructed on second degree murder. Prettyman does not hold that one cannot directly aid and abet second degree murder. (Cf. People v. Woods, supra, 226 Cal.App.3d 1037 [substantial evidence supports conviction for aiding and abetting second degree murder conviction].) Nor does Prettyman suggest that a conviction for aiding and abetting second degree murder can only be sustained on the theory that the defendant aided and abetted some lesser target offense. [7]

IV. Instruction on Second Degree Felony Murder

Defendants contend the court erred in giving an instruction on second degree felony murder.

As noted, the court instructed the jury on aiding and abetting. The court defined murder and instructed on first and second degree murder, express and implied malice, voluntary manslaughter, sudden quarrel, heat of passion, provocation, and then involuntary manslaughter.

After delineating the various types of homicide, the court continued, "The distinction between murder and manslaughter is that murder requires malice, while manslaughter does not. When the act causing the death, though unlawful, is done in the heat of passion or is excited by a sudden quarrel that amounts to adequate provocation or in the actual but unreasonable belief in the necessity to defend against eminent [sic] peril of life or great bodily injury, the offense is manslaughter. In that case, even if an intent to kill exists, the law is that malice, which is an essential element of murder, is absent.

[¶] To establish that a killing is murder and not manslaughter, the burden is on the People to prove beyond a reasonable doubt each of the elements of murder and the act which caused the death was not done in the heat of passion or upon sudden quarrel or in the actual, even though unreasonable belief in the necessity to defend against imminent peril to life or great bodily injury. [¶] If a person causes another death while committing a felony which is dangerous to human life, the crime is murder. If a person causes another death while committing a misdemeanor which is dangerous to human life under the circumstances of its commission, the crime is involuntary manslaughter. [¶] There are many acts which are lawful but nevertheless endanger human life. If a person causes another [sic] death by doing an act or engaging in conduct in a criminally negligent manner without realizing the risk involved, he is guilty of involuntary manslaughter. If, on the other hand, the person realized the risk and acted in total disregard of the danger to life involved, malice is implied, and the crime is murder." (Italics added; see CALJIC No. 8.51.)

Defendants note that under the merger doctrine of People v. Ireland (1969) 70 Cal.2d 522, assault with a deadly weapon may not support a conviction for second degree felony murder. [8] (See People v. Hansen (1994) 9 Cal.4th 300, 311-316.) Defendants reason that if a perpetrator cannot be convicted of felony murder based on assault with a deadly weapon, then those who encourage or facilitate the assault cannot be convicted of aiding and abetting second degree felony murder. However, they argue that the instructional language italicized above permitted the jury to do just that.

Viewed in isolation, the italicized language broadly and simply states the principle of felony murder. However, in determining the impact of an instruction, we do not consider it in isolation; rather, we view it along with all the instructions and ask whether there is a reasonable likelihood that the jurors would misunderstand the challenged language in a way that was prejudicial. (See Estelle v. McGuire (1991) 502 U.S. 62, 72; Boyde v. California (1990) 494 U.S. 370, 380; People v. Castillo (1997) 16 Cal.4th

1009, 1016; People v. Price (1991) 1 Cal.4th 324, 446; People v. Garrison (1989) 47 Cal.3d 746, 780.)

Here, the jury was repeatedly told that murder requires a finding of malice, express or implied. The court explained that implied malice involved the commission of an act that is dangerous to human life. The court emphasized that to prove murder, the prosecutor had to prove malice beyond a reasonable doubt. The challenged instructional language echoed the "dangerous to human life" language of the implied malice instruction. Moreover, its immediate context indicated that the purpose of the language was to distinguish murder from manslaughter and not offer an additional theory of liability. In this regard, we note that the court did not give the usual felony murder instructions that explain this theory. (See, e.g., CALJIC Nos. 8.21 [first degree felony murder]; 8.32 [second degree felony murder].) The court also removed references to felony murder in other instructions that it gave. Last, we note that the prosecutor never referred to this sentence, mentioned felony murder, or in any way suggested that defendants could be convicted of murder without a finding that the perpetrator killed Walter with malice. On the other hand, two defense attorneys heard the instruction and did not object to it. Although the failure to object did not waive the issue on appeal, it reveals that they perceived little or no danger that the jury might unduly focus on and misunderstand the purpose of the court's language.

In sum, we finding no reasonable likelihood that the jurors would, or did, think they could convict defendants without finding that the stabbing death of Walter involved implied malice.

Defendant's reliance on Suniga v. Bunnell (9th Cir. 1993) 998 F.2d 664 does not persuade us otherwise. Unlike here, the court in Suniga fully instructed the jury on the principles of felony murder and clearly presented it as a viable theory upon which to convict the defendant, even though the prosecutor did not assert or rely on this theory and the theory was improper under the Ireland merger doctrine. (Id. at pp. 666, 669.) [9]

V. Instruction on Assault

Defendants contend that the court erroneously instructed the jury on the mental element necessary to convict for assault with a deadly weapon. We disagree.

Concerning assault, the court instructed the jury, "In order to prove an assault, each of the following elements must be proved: A person willfully and unlawfully committed an act which by its nature would probably and directly result in the application of physical force on another person, and two, at the time the act was committed the person intended to use physical force upon another person or to do an act that was substantially certain to result in the application of physical force upon another person; and three, at the time the act was committed the person had the present ability to apply physical force to the person of another." (See CALJIC No. 9.00 (1998 Revision).)

Defendants assert that it is error to instruct on general intent in a case where the crime charged

requires a specific intent. According to defendants, assault is a specific intent crime insofar as it requires an intent to use physical force upon another person or an intent to do an act that was substantially certain to result in the application of physical force upon another. They note that the court so instructed the jury. They also note, however, that in its instruction on the concurrence of act and mental state with respect to assault, the court stated that "there must exist a union or joint operation of act or conduct and general criminal intent. General intent does not require an intent to violate the law. When a person intentionally does that which the law declares to be a crime, he is acting with general criminal intent, even though he may not know that his act or conduct is unlawful." (Italics added; see CALJIC No. 3.30.) Defendants claim that the court's instructions were prejudicially misleading and confusing and therefore compel reversal. This argument is meritless.

In People v. Rocha (1971) 3 Cal.3d 893, 899, the California Supreme Court concluded that assault requires only a general criminal intent and not a specific intent to cause injury. In People v. Colantuono (1994) 7 Cal.4th 206, 215-216, the court reaffirmed Rocha and reiterated that assault was a general intent crime. (Accord, People v. Williams (2001) 26 Cal.4th 779, 784; In re Tameka C. (2000) 22 Cal.4th 190, 198.) Although assault requires an intent to use force or do an act that would result in force, this requirement does not convert assault into a specific intent crime. Nor did the court's instruction here suggest that it was. Rather the instruction merely informed the jury that if a person intentionally does what the law forbids, then he has acted with general intent and no further specific intent to violate the law or knowledge that he is violating the law is necessary to convict. We perceive no friction, confusion, or error in the court's instructions concerning assault.

VI. Pre-Indictment Delay

Hernandez separately contends that the delay in filing charges against him for the October 1997 assault on Garcia (Count 6) violated his right to due process and a fair trial.

"Delay in prosecution that occurs before the accused is arrested or the complaint is filed may constitute a denial of the right to a fair trial and to due process of law under the state and federal Constitutions. A defendant seeking to dismiss a charge on this ground must demonstrate prejudice arising from the delay. The prosecution may offer justification for the delay, and the court considering a motion to dismiss balances the harm to the defendant against the justification for the delay. [Citations.] A claim based upon the federal Constitution also requires a showing that the delay was undertaken to gain a tactical advantage over the defendant. [Citations.] We have observed that `[p]rejudice may be shown by loss of material witnesses due to lapse of time [citation] or loss of evidence because of fading memory attributable to the delay.' [Citation.]" (People v. Catlin (2001) 26 Cal.4th 81, 107.)

The record reveals that on November 4, 1997, the district attorney filed a petition under Welfare and Institutions Code section 602 to declare Hernandez, then a minor, a ward of the court. The petition alleged that in October 1997, Hernandez assaulted Garcia. For some reason, the district attorney was

unable to proceed with the jurisdictional hearing, and the petition was dismissed without prejudice on December 1, 1997.

On September 18, 1998, Hernandez was involved in the offenses against Molina, Arthur, and Walter. On September 23, the district attorney filed a second petition, alleging the October 1997 assault (Count 6) and the September 1998 assaults and murder. On December 4, 1998, the juvenile court found Hernandez unfit for juvenile court.

Thereafter, the district attorney filed an information. Hernandez moved to dismiss Count 6 due to preindictment delay, but the court denied the motion.

Hernandez argues that the approximately 10-month delay between the dismissal of the petition in December 1, 1997, and the filing of a second petition in September 23, 1998, was prejudicial for two reasons:

(1) He was unable to have the Garcia assault adjudicated in juvenile court and thus was denied the protection, guidance, and anonymity of the juvenile court system; and (2) the Garcia assault was jointly tried with the offenses arising from the later assault and murder.

Preindictment delay may be prejudicial because it can affect the fairness of a defendant's trial due, for example, to the loss of witnesses, the fading memory of available witnesses, the inability to prepare an adequate defense. (See People v. Catlin, supra, 26 Cal.4th at p. 107; People v. Archerd (1970) 3 Cal.3d 615, 640.)

Hernandez does not claim that his trial was unfair because the 10- month delay caused the loss of witnesses, evidence, or faded memories or adversely affected his ability to prepare a defense. He claims it was unfair because Count 6 was joined for trial with the murder and other charges. However, all of the charges were of a similar class, and the court denied Hernandez's motion to sever Count 6. (See Pen. Code, § 954.) Since he does not claim that the court erred in denying the motion, he cannot establish that the delay which resulted in the joinder of additional charges denied him a fair trial. Moreover, the record does not suggest that the joint trial of all charges resulted in "gross unfairness." (See People v. Johnson (1988) 47 Cal.3d 576, 590.)

Furthermore, Hernandez cites, and we are aware of, no authority suggesting that his inability to have the Garcia assault adjudicated in juvenile court constitutes the sort of prejudice upon which a due process claim of preindictment delay may properly be based. Although the delay made it possible for additional offenses to be included in the second petition filed in Juvenile Court, the delay did not cause the court to declare Hernandez unfit for juvenile court. Rather, it was Hernandez's own conduct after the first petition was dismissed that rendered him unfit and thus deprived him of the benefits of juvenile court.

In sum, Hernandez has failed to demonstrate that the 10-month delay between the first and second petition was prejudicial. Thus, he cannot establish that the delay violated his constitutional right to due process.

VII. Disposition

The judgments against Valle and Hernandez are affirmed.

WE CONCUR:

Bamattre-Manoukian, Acting P.J.

Rushing, J.

1. This assault (Count 6) was charged against Hernandez only.

2. Police went to Hernandez's home and found a Dallas Cowboys jersey and a hat with the name "Kiki" on it. Hernandez admitted that the hat and jacket were his, that his nickname was "Kiki," and that he was in a Sureño gang.

3. Valle moved over to a bush. Police later found a knife with Valle's fingerprints and Molina's blood on it.

4. Ana Valle called police after seeing some males around her father's truck and hearing its alarm go off. A vandalism report was made. Defendant Valle left the house sometime after Ana saw the men.

5. CALJIC No. 3.02 (2000 Re- revision) states, in pertinent part, "One who aids and abets [another] in the commission of a crime [or crimes] is not only guilty of [that crime] [those crimes], but is also guilty of any other crime committed by a principal which is a natural and probable consequence of the crime[s] originally aided and abetted."

6. For this reason, we reject defendants' related claim that the court committed reversible error in failing to give CALJIC No. 3.02. Given our analysis, the alleged error, if any, was harmless under any standard of review. (See Chapman v. California (1967) 386 U.S. 18, 24 [federal reasonable- doubt standard; People v. Watson (1956) 46 Cal.2d 818, 836 [state reasonably- probable standard].)

7. Nothing in our discussion, however, is intended to suggest that it would have been inappropriate to give CALJIC No. 3.02.

8. In Ireland, the California Supreme Court held that a felony- murder theory cannot be based on a felony which is an integral part of the homicide because such a theory would preclude the jury from considering malice aforethought in all cases where the homicide has been committed as a result of a felonious assault. (People v. Ireland, supra, 70 Cal.2d at p. 539.)

9. Given our analysis and discussion of defendants' claims of instructional error in failing to give CALJIC No. 3.02 and giving CALJIC No. 8.51, we reject their further claim that the cumulative prejudice from both errors compels reversal of their murder convictions.