

CERTIFIED FOR PARTIAL PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL ALAN WILLIAMS,

Defendant and Appellant.

F052218

(Super. Ct. No. MCR017968B)

**ORDER MODIFYING
OPINION, DENYING
REHEARING AND
DENYING REQUEST FOR
EXPANDED PUBLICATION**
[No Change in Judgment]

THE COURT:

It is ordered that the opinion filed herein on October 22, 2008, be modified in the following particulars:

Footnote 24, on page 35, is deleted in its entirety and is to be replaced with the following footnote:

24 Appellant raises several additional gang-related issues. In light of our conclusion that the special circumstance allegation and count 2 must be reversed, we do not address them, with the exception of his claim the entire judgment must be reversed because the trial court permitted the gang expert, Agent Dilbeck, to equate groups of Peckerwoods with al Qaeda cells. In describing the Peckerwoods' organizational structure, Dilbeck testified that Peckerwood groups are divided into what are referred to as cells and explained: "You could have Al-Qaeda cells that have the same ideology from one cell to the other, but they may not have any personal knowledge of what the end goal of that individual group is. It would be the same as a Peckerwood cell. They have common ideologies with a smaller cell of the Peckerwoods in Madera, and may have – may not know what

another cell of Peckerwoods in Madera is doing. But they're – they have the same type of ideology.”

We have examined the testimony in context and conclude the trial court did not err in admitting it, as Dilbeck did not suggest the Small Town Peckerwoods were a group like al Qaeda or that appellant belonged to an organization that was akin to a terrorist group in its conduct, but simply that the groups were similarly structured. Moreover, were we to find error, we would conclude it should not be reviewed under the harmless-beyond-a-reasonable-doubt standard of *Chapman v. California* (1967) 386 U.S. 18, 24, since, there being permissible inferences the jury could draw from the evidence, its admission did not constitute a violation of due process. (*People v. Albarran* (2007) 149 Cal.App.4th 214, 229-230; accord, *McKinney v. Rees* (9th Cir. 1993) 993 F.2d 1378, 1384.) Instead, any error should be reviewed under the state law test of *People v. Watson* (1956) 46 Cal.2d 818, 836. Utilizing that standard, and considering the manner in which the al Qaeda analogy was used and the other example Dilbeck gave (different branches of the military), we find no reasonable probability the references to al Qaeda prejudiced appellant.

Except for the modification set forth, the opinion previously filed remains unchanged.

This modification does not effect a change in judgment.

Appellant's petition for rehearing is denied.

Respondent's petition for rehearing is denied.

Appellant's request for expanded publication is denied.

ARDAIZ, P. J.

WE CONCUR:

CORNELL, J.

KANE, J.