Filed 6/21/12 In re Jose X. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re JOSE X., a Person Coming Under the Juvenile Court Law.	B235471
THE PEOPLE, Plaintiff and Respondent, v. JOSE X., Defendant and Appellant.	(Los Angeles County Super. Ct. No. TJ19395)

APPEAL from a judgment of the Superior Court of Los Angeles. Cynthia Loo, Referee. Affirmed.

Elana Goldstein, 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, Scott A. Taryle and Michael C. Keller, Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court sustained a petition under Welfare and Institutions Code section 602, finding true the felony charge that minor Jose X. (Appellant) committed the crime of robbery in violation of Penal Code section 211. The court declared Appellant to be a ward of the court and ordered him to be placed at home on probation. Appellant appeals from the adjudication/disposition order, contending that there was insufficient evidence to sustain the petition. We disagree and affirm.

BACKGROUND

On July 19, 2011, a petition was filed alleging that 14-year-old Appellant committed the crime of second degree robbery in violation of Penal Code section 211. Appellant denied the petition, and a contested adjudication hearing was held.

Prosecution Case

At the hearing, the victim, Jose Galindo, testified about the robbery, which occurred shortly before midnight on July 15, 2011. Galindo was using his cellular telephone as he rode his bicycle on the sidewalk on East Vernon Avenue in Los Angeles. Someone hit Galindo and he fell off of his bicycle. Galindo suffered swelling and a loose tooth. While he was on the ground, Galindo saw a group of four or five people around him, which included one female. The members of the group approached Galindo and took his phone, his bicycle and his backpack. Then they ran away in different directions. On the day of the incident and at the adjudication hearing, Galindo was unable to identify Appellant as one of the persons who hit him or took his property. Galindo testified that he "didn't manage to take a look at the people."

Los Angeles Police Department Officer Jesus Contreras also testified at the adjudication hearing. He responded to a call about the robbery, which was made from a liquor store on East Vernon Avenue. When Officer Contreras and his partner arrived at the scene, they spoke with Galindo and then searched for suspects. The officers looked behind 212 East Vernon Avenue, a residence located one or two houses away from the liquor store, because Galindo told them that he had seen a few of the suspects run to the rear of that residence. Appellant was there. The officers brought Appellant to the front of the residence. Upon seeing Galindo, Appellant said: "'My homey hit him.' 'I just

took his bike and his backpack.'" When asked where the bicycle and backpack were, Appellant told Officer Contreras that the items were behind the residence where the officers had located him. Officer Contreras recovered the bicycle and backpack and returned them to Galindo.

Defense Case

Appellant testified at the hearing and denied that he was involved in the robbery. He acknowledged that he told the officers where to find the bicycle and backpack. He could not recall whether he made the statement that Officer Contreras attributed to him: "'My homey hit him.' 'I just took his bike and his backpack.'"

Appellant stated that he was "hanging out" with friends and his brother in the backyard of 212 East Vernon Avenue when he saw Galindo ride by on a bicycle. Then he saw a crowd of people gathered about three or four houses away. Appellant testified that he did not see anyone hit Galindo. Appellant "assumed" that someone hit Galindo because appellant saw Galindo running without his bicycle. Then two people brought Galindo's property to the house Appellant was visiting.

A male Appellant knew as "Chino" brought the bicycle into the backyard. A female Appellant knew as "Loca" threw the backpack over the gate. Chino told Appellant to pick up the backpack and bring it into the backyard. Appellant complied. Chino and Loca left the residence and boarded a bus. At the hearing, Appellant referred to Chino and Loca as his "friends," but stated that he had just met them the same day as the incident. According to Appellant, the police arrived at the residence about 15 minutes after Appellant carried the backpack into the backyard. Appellant did not tell the police that Chino and Loca were involved in the incident.

The juvenile court sustained the petition, declared Appellant to be a ward of the court pursuant to Welfare and Institutions Code section 602, and ordered him to be placed at home on probation.

DISCUSSION

Appellant contends the juvenile court erred in sustaining the petition because there is insufficient evidence he committed a robbery or aided and abetted a robbery. We disagree.

"In assessing a claim of insufficiency of evidence, the reviewing court's task is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] The federal standard of review is to the same effect: Under principles of federal due process, review for sufficiency of evidence entails not the determination whether the reviewing court itself believes the evidence at trial establishes guilt beyond a reasonable doubt, but, instead, whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. [Citation.] The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence. [Citation.] '"Although it is the duty of the [trier of fact] to acquit a defendant if it finds the circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the [trier of fact], not the appellate court[,] which must be convinced of the defendant's guilt beyond a reasonable doubt. '"If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment."' [Citations.]"' [Citation.]" (*People v. Rodriguez* (1999) 20 Cal.4th at 1, 11.)

Penal Code section 211 defines robbery as "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." The "taking element of robbery" includes "two necessary elements: caption or gaining possession of the victim's property, and asportation or carrying away the loot." (*People v. Lopez* (2003) 31 Cal.4th

1051, 1056.) The taking is felonious if the defendant had the intent to "deprive the owner permanently of his or her property." (*People v. Bacon* (2010) 50 Cal.4th 1082, 1117.)

A "robbery remains in progress until the perpetrator has reached a place of temporary safety." (*People v. Flynn* (2000) 77 Cal.App.4th 766, 772.) "A perpetrator has reached a place of temporary safety with the property if he or she has successfully escaped from the scene, is no longer being pursued, and has unchallenged possession of the property." (CALCRIM No. 1603, as cited by Appellant below and on appeal.) "Whether a defendant has reached a place of temporary safety is a question of fact for the [trier of fact]," which is determined based on the application of an objective standard. (*People v. Johnson* (1992) 5 Cal.App.4th 552, 559.)

At the adjudication hearing, the prosecution explained that its theory of the case is that Appellant aided and abetted the robbery by carrying away the property to a place of temporary safety. "[I]n order to be held liable as an aider and abettor, the requisite intent to aid and abet [the robbery] must be formed before or during such carrying away of the loot to a place of temporary safety." (*People v. Cooper* (1991) 53 Cal.3d 1158, 1161, italics omitted.)

Under either the prosecution or defense version of events, substantial evidence supports the juvenile court's decision to sustain the petition. The prosecution presented evidence demonstrating: Members of a group of four or five individuals hit Galindo and took his property. Galindo told police officers that he saw a few of the suspects run behind a residence located at 212 East Vernon Avenue. The officers searched the location and found Appellant there. When the officers walked Appellant to the front of the residence and Appellant saw Galindo, Appellant told the officers: "'My homey hit him.' 'I just took his bike and his backpack.'" Appellant also told the officers where they could find the bicycle and backpack. Reasonable inferences from this evidence are (1) that Appellant was present at the scene of the robbery, (2) that Appellant saw his

accomplice hit Galindo, and (3) that Appellant took the bicycle and backpack from Galindo and carried them away.[1]

Appellant did not tell police officers the version of events that he presented at the adjudication hearing—that it was "Chino" and "Loca" who took the property from Galindo, and that he (Appellant) merely carried the backpack to the backyard after Loca threw it over the gate. Even if this were the case, substantial evidence demonstrates that Appellant aided and abetted the robbery.

According to Appellant, he had been spending time with Chino and Loca at 212 East Vernon Avenue. At some point, Appellant was in the backyard with his brother and a friend, while Chino and Loca were about four houses down the street. Appellant saw Galindo ride by on a bicycle. He also saw a crowd gathered about three or four houses down the street. Next, Appellant saw Galindo running in the street without his bicycle. Then Chino arrived with the bicycle and took it into the backyard. Loca threw the backpack over the gate. Appellant indicated that he knew the bicycle was the one Galindo had been riding, and the backpack was the one Galindo had been carrying. Appellant assumed that someone hit Galindo before Chino and Loca took his property. Chino told Appellant to bring the backpack into the backyard. Appellant complied.

Even if Appellant's version of events is credited, substantial evidence demonstrates that the property had not reached a place of temporary safety at the time Appellant picked up the backpack and carried it away. (See *People v. Cooper*, *supra*, 53 Cal.3d at p. 1161 ["in order to be held liable as an aider and abettor, the requisite intent to aid and abet [the robbery] must be formed *before or during such carrying away of the loot to a place of temporary safety*"].) Appellant saw Galindo running and he knew that Chino and Loca had wrongfully taken Galindo's property. The incident occurred just a few houses away on East Vernon Avenue. A reasonable inference from the evidence is

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[1] The fact Galindo could not identify Appellant does not mean that the prosecution failed to prove identity, as Appellant argues on appeal. As set forth above, there is substantial circumstantial evidence that Appellant was involved in the robbery, including his statement to the police.

that Chino and Appellant carried the property to the backyard to conceal it from Galindo, who was still in the vicinity. Substantial evidence shows that Appellant did not merely receive stolen property, as he argues on appeal. He aided and abetted the robbery by carrying away the property to a place of temporary safety.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, Acting P. J.

JOHNSON, J.