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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ERNESTO GONZALEZ,

Defendant and Appellant.

B282883

(Los Angeles County
Super. Ct. No. VA143470)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert J. Higa, Judge. Affirmed.

Karyn H. Bucur, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Colleen M. Tiedemann and Christopher G. Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant and appellant Ernesto Gonzalez of second degree robbery (Pen. Code, § 212.5, subd. (c)¹). It found not true allegations that defendant personally used a firearm (§ 12022.53, subd. (b)) and that a principal was armed during the commission and attempted commission of the robbery (§ 12022, subd. (a)(1)). In a subsequent court trial, defendant admitted as true the allegation that he served a prior prison term within the meaning of section 667.5, subdivision (b). The trial court sentenced defendant to state prison for a term of six years.

On appeal, defendant contends that insufficient evidence supported the force or fear element of his robbery conviction because the jury found the firearm enhancement allegations to be not true and because, in defendant's view, there was no other evidence of force or fear. We affirm.

BACKGROUND

About 1:30 a.m. on December 4, 2016, Francisco Rodriguez bought some lottery scratchers and a pack of cigarettes at a gas station in Bell Gardens. He was carrying a cell phone, an electrician's knife, \$30 or \$35 in his pocket, and \$400 in his sock.

When Rodriguez left the gas station, defendant and Edgar Flores² approached him on bicycles. Defendant said, "Where is my money?" Defendant, who was an arm's length from Rodriguez, lifted up his jacket and revealed a gun. Rodriguez

¹ All statutory citations are to the Penal Code.

² Flores, defendant's co-defendant at trial, is not a party to this appeal.

later told an officer that defendant pointed the gun at his torso.³ Defendant did not verbally threaten Rodriguez.

Flores, who was riding his bicycle in circles “looking around” and “watching,” said that Rodriguez had scratchers “hanging out of [his] sweater.” Rodriguez testified he gave defendant his cell phone, cigarettes, lottery scratchers, and the \$30 he had in his pocket “[b]ecause [defendant] asked for it, and I was scared.”

Rodriguez went back to the gas station. He was in shock and told an employee what had happened. At the employee’s suggestion, Rodriguez called the police. Bell Gardens Police Department Officer Luis Isarraraz responded to the gas station. According to Officer Isarraraz, Rodriguez appeared to be “very frightened.” Officer Isarraraz took Rodriguez to a nearby gas station where Rodriguez identified defendant and Flores.

The second gas station was searched, but no gun was found. Four officers conducted a systematic search of the area and did not find a gun.

Rodriguez testified he knew defendant and Flores prior to the robbery.⁴ A year and a half before, defendant had asked Rodriguez to store his bicycle. While in Rodriguez’s possession, defendant’s bicycle had been stolen. Defendant had asked

³ At trial, Rodriguez testified that he did not believe defendant intended to point the gun at him, but did so while in the process of showing him the gun.

⁴ Rodriguez gave conflicting testimony on this point, initially denying he knew either defendant. Rodriguez did not want to testify. He testified he was “scared because of [his] family and because they knew where [he] live[d]. And [he’d] gotten like threats”

Rodriguez to pay him \$100 for the bicycle. Rodriguez had agreed, but ended up paying defendant \$200 or \$300 in installments. At the time of the robbery, Rodriguez did not owe defendant any money for the bicycle. Rodriguez did not tell the 911 operator or Officer Isarraraz about the bicycle storage incident with defendant, and only informed the police two days before trial.

DISCUSSION

Defendant argues that insufficient evidence supported the force or fear element of his robbery conviction because the jury found the firearm enhancement allegations to be not true. Thus, contends defendant, because there was no other evidence that the taking of Rodriguez's property was accomplished by means of force or fear, there was insufficient evidence to support the jury's finding on the force or fear element for defendant's robbery conviction.

I. Standard of Review

“When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citation.] We determine ‘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.’ In so doing, a reviewing court ‘presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.’”

(*People v. Edwards* (2013) 57 Cal.4th 658, 715.) “A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support” the jury’s verdict.” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

II. Analysis

“Robbery is 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.” (§ 211.) “[F]orce’ or ‘fear’ must be the *means* by which the taking was accomplished.” (*People v. Prieto* (1993) 15 Cal.App.4th 210, 215.) “The element of fear for purposes of robbery is satisfied when there is sufficient fear to cause the victim to comply with the unlawful demand for his property.” (*People v. Ramos* (1980) 106 Cal.App.3d 591, 601-602, overruled on another point in *People v. Scott* (1994) 9 Cal.4th 331, 353, fn. 16.)

Generally, an inherently inconsistent verdict is allowed to stand if supported by sufficient evidence.⁵ (*People v. Lewis* (2001) 25 Cal.4th 610, 656; *People v. Pahl* (1991) 226 Cal.App.3d 1651, 1656 [in cases of inconsistent verdicts, defendants “take the position that the acquittal is the legally correct verdict while the

⁵ There is a “limited exception to the rule” not applicable here, i.e., “where ‘all of the essential elements of the crime of which the defendant was acquitted are identical to some or all of the essential elements of the crime of which he was convicted, and proof of the crime of which the defendant was acquitted is necessary to sustain a conviction of the crime of which the defendant was found guilty.’” (*People v. Federico* (1981) 127 Cal.App.3d 20, 32.) Here, the truth of the firearm allegation was not *necessary* to finding guilt for the robbery offense.

conviction is not. This argument has been universally rejected because inconsistent verdicts are probably the result of compromise in the jury room or of an extension of leniency or mercy to the defendant”].) In other words, “the fact that a guilty verdict on one count is inconsistent with an acquittal verdict on another [does not] compel[] reversal if there is substantial evidence to support the conviction.” (*People v. Pahl, supra*, 226 Cal.3d at p. 1657; see also § 954 [“An acquittal of one or more counts shall not be deemed an acquittal of any other count”].) This rule applies equally to enhancements. (*People v. Lopez* (1982) 131 Cal.App.3d 565, 571 [“The fact that the word ‘enhancement’ is used rather than ‘offense’ does not nullify the underlying rationale of refusing to invalidate an inconsistent jury verdict if it is otherwise supported by substantial evidence”]; *People v. Federico, supra* 127 Cal.App.3d at pp. 32-33 [affirming first degree murder conviction for shooting death where jury found not true allegation that a principal was armed with a firearm].)

Here, the jury found not true the allegations that defendant did personally use a firearm and that a principal was armed. Defendant argues, in effect, that those findings were inconsistent with a finding that defendant accomplished the taking of Rodriguez’s property through force or fear by the use of a firearm.

Any inconsistency between the robbery verdict and firearm enhancement findings is not a basis for overturning defendant’s robbery conviction because the conviction was supported by sufficient evidence. (*People v. Lewis, supra*, 25 Cal.4th at p. 656; *People v. Pahl, supra*, 226 Cal.App.3d at p. 1656; *People v. Lopez; supra*, 131 Cal.App.3d at p. 570; *People v. Federico, supra*, 127 Cal.App.3d at p. 32.) Rodriguez testified that, when defendant

and Flores approached him, defendant said, “Where is my money?” and lifted his jacket, displaying a gun. Rodriguez gave defendant his property—his cell phone, cigarettes, lottery scratchers, and \$30 “[b]ecause [defendant] asked for it, and I was scared.” When Officer Isarraraz arrived at the gas station, Rodriguez appeared to be “very frightened.” Accordingly, there is sufficient evidence that defendant accomplished the taking of Rodriguez’s property by displaying a gun and causing Rodriguez to be in fear.

DISPOSITION

The judgment is affirmed.

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KIN, J.*

We concur:

BAKER, Acting P. J.

MOOR, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.