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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. SAMUEL G. BLANCO, Defendant and Appellant.	B267512 (Los Angeles County Super. Ct. No. BA416708)

APPEAL from a judgment of the Superior Court of Los Angeles County, Craig Richman, Judge. Affirmed.

Heather J. Manolakas, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle, Colleen M. Tiedemann and David W. Williams, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Samuel G. Blanco appeals from a judgment and 11-year prison sentence, following his convictions for attempted robbery, grand theft, six counts of second degree robbery and nine counts of conspiracy to commit robbery. He contends there was insufficient evidence to support one of the robbery convictions. He further contends that with respect to the charges of conspiracy to commit robbery, the trial court erred in failing to give an instruction on the lesser included offense of conspiracy to commit theft. For the reasons set forth below, we find no error and, accordingly, affirm.

STATEMENT OF THE CASE

A jury convicted appellant of one count of attempted second degree robbery (Pen. Code, §§ 664/221; count 1),[1] nine counts of conspiracy to commit robbery (§ 182, subd. (a)(1); counts 2, 4, 6, 12, 14, 16, 18, 20, & 21), six counts of second degree robbery (§ 211; counts 3, 5, 11, 13, 15 & 19), and one count of grand theft of personal property (§ 487, subd. (a); count 17).[2] It found not true personal firearm use allegations (§§ 12022, subd. (a)(1), 12022.53, subd. (b)).

The court sentenced appellant to state prison for a total term of 11 years, consisting of the middle term of three years on count 3, plus consecutive sentences of one-third the midterm (one year) on counts 2,

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[1] All further statutory citations are to the Penal Code, unless otherwise stated.

[2] Counts 1 and 2 are related charges involving the same victim (Takui Erdoglian). Similarly, counts 3 and 4 (victim Abul Kalam), 5 and 6 (Zepur Ourfalian), 11 and 12 (Jasbir Sekhon), 13 and 14 (Vichai Sang Negonon), 15 and 16 (Muhammad Ayyaz), 17 and 18 (Sirakin Minasyan), and 19 and 20 (Navneet Bhandari) are related counts.

Counts 7 through 10 of the amended information involved co-defendants and were not applicable to appellant.

5, 11, 13, 15, 18, 19, and 21. The court imposed, but stayed pursuant to section 654, the same prison terms on the related conspiracy charges (counts 1, 6, 12, 14, 16, and 20). It also imposed and stayed one-third the midterm (8 months) on the grand theft offense (count 17). Appellant timely appealed.

STATEMENT OF THE FACTS

A. *Prosecution Case*

1. *The Victims*

a. *Conspiracy to Commit Robbery and Attempted Robbery of Takui Erdoglian (counts 1 and 2*)

On September 25, 2013, at approximately 4:00 p.m., Takui Erdoglian left her ice cream business to deposit approximately $17,000. As Erdoglian waited behind a car stopped at the corner of Orange Grove and Lake, a man standing outside smashed the passenger side window of her vehicle. He reached inside and grabbed the money bag. Erdoglian was able to pull it back and place it under her feet. The man punched Erdoglian in the face multiple times and said, "Bitch, give me the money." He then tried to choke her with her seatbelt. As Erdoglian began to lose consciousness, someone came to her assistance. When she recovered, she immediately pushed the gas pedal. The vehicle crashed into a wall. When the car came to a stop, Erdoglian noticed the man was gone and the money bag was still next to her feet.

b. *Conspiracy to Commit Robbery and Robbery of Abul Kalam (counts 3 and 4)*

On January 23, 2012, at about 12:30 p.m., Abul Kalam got into his car in the parking lot of his 7-Eleven store, intending to go to the bank to deposit his cash receipts totaling approximately $12,000. As he started driving, he heard the sound of a flat tire. He turned around and drove to a nearby air pump to inflate the tire. According to his statements to the police, he tried to inflate the flat tire, but the air pump was not working. When he got back into the car, he saw someone

near the passenger window, pointing a handgun at him. The suspect was a white or light-skinned Hispanic male, wearing a gray jacket and a black hat. The man shouted something and used the gun to break the passenger-side window. After breaking the window, the man grabbed the bag containing the cash which was on the console and fled to a waiting car, possibly a silver Nissan Maxima.

At trial, Kalam testified that while still in his car, he saw a shadow, then heard a "strange, loud noise," causing him to become "really frightened." Ten to 15 seconds later, he saw his car's front passenger-side window was broken, there was glass on his lap, and the money bag was gone. Outside the car, he saw a man running and getting into a car. Kalam called the police.

Officer Antonio Martin arrived at the scene and retrieved from Kalam's car a baseball cap that did not belong to Kalam and which Martin booked into evidence. Criminalist Greg Dooley recovered hair fibers from the inner headband of the cap. DNA analysis of the hair matched that of appellant's DNA profile.

c. *Conspiracy to Commit Robbery and Robbery of Zepur Ourfalian (counts 5 and 6)*

On January 14, 2013, at around noon, Zepur Ourfalian left the gas station where she was employed to deposit about $27,000. She got into her car and placed the money bag on the front passenger seat. She had barely started the car when she became aware that someone had just broken her car's passenger side window with what she believed was a long black gun. Ourfalian testified, "For a second, I just stopped. And what happened was that I thought that the robberies [*sic*] was going on." The suspect, who was wearing a hooded sweatshirt, grabbed the money bag and jumped into the back of a waiting silver sedan. Ourfalian identified appellant from a six-pack as the person who broke the window and took the money bag. She also identified him as her assailant at trial.

d. *Conspiracy to Commit Robbery and Robbery of Jasbir Sekhon (counts 11 and 12*)

On May 13, 2013, at around 9:30 a.m., Jasbir Sekhon drove from the gas station where she was the manager to deposit approximately $40,000 in cash. As she approached the bank, a parked Nissan Altima began backing up and blocked her. After Sekhon stopped her vehicle, she noticed someone through the passenger side window. Suddenly the window was smashed. The person who broke the window and Sekhon both grabbed her purse, containing the money. While Sekhon struggled with the suspect, she saw his face was covered and he was wearing sunglasses, a baseball cap and a hood. The man took the purse and ran toward the Nissan. He got into the passenger side of the car and it drove away.

e. *Conspiracy to Commit Robbery and Robbery of Vichai Sang Negonon (counts 13 and 14)*

On May 28, 2013, at around 10:30 a.m., Vichai Sang Negonon drove to a Bank of America branch to deposit approximately $25,000 from sales at his gas station. As Negonon got out of his car, a man wearing a hooded sweatshirt and sunglasses approached him. The man suddenly punched Negonon, and he punched back. Another man wearing a black hooded sweater came up from behind and hit Negonon. After he fell to the ground, the men took his money and ran to a waiting car. When shown a six-pack containing appellant's picture, Negonon stated that appellant "kind of looks like the guy" who had robbed him.

f. *Conspiracy to Commit Robbery and Robbery of Muhammad Ayyaz (counts 15 and 16)*

On June 8, 2013, Muhammad Ayyaz was employed as a cashier and assistant manager at a 7-Eleven. In the afternoon he left the store to deposit $7,026 in cash. As Ayyaz started driving, he noticed the car was making a strange noise. He parked in a nearby hospital parking lot, got out and looked at the tires. A piece of wood with a nail was stuck to the front right tire. Ayyaz locked his car, took the bag

containing the money, and started walking back to the 7-Eleven. Someone came up from behind and grabbed him. Ayyaz turned and the person said, "You're not going to move at all." The suspect lifted his shirt and reached toward his waistband, as if to pull out a weapon. Ayyaz became "very frightened." The man, who was wearing a blue nursing uniform, grabbed the money bag and was picked up by a silver Nissan Sentra.

g. *Conspiracy to Commit Robbery and Grand Theft of Sirakin Minasyan (counts 17 and 18)*

On July 8, 2013, at around 11:30 a.m., Sirakin Minasyan left the Arco gas station where he was employed to deposit approximately $11,600 in cash. Minasyan got into his car and placed the money bag on the passenger seat. As he started driving, he heard a noise coming from one of the rear tires. He got out, walked to the back of his car and saw that the rear passenger side tire was completely flat. Minasyan began heading back to the driver's side of his car when he saw someone jump from the driver's side of his car into the rear door of a white sedan. Minasyan saw that the money bag was missing and later saw a deep cut in the side of the flat rear tire.

h. *Conspiracy to Commit Robbery and Robbery of Navneet Bhandari (counts 19 and 20)*

On September 9, 2013, Navneet Bhandari left a 7-Eleven where he was the manager to deposit approximately $9,000 in cash. Bhandari and a co-worker got into his car, and Bhandari placed the money bag on the center console. As he started driving, he felt something was wrong with the car. He stopped, got out of the car, and noticed that one of the rear tires was flat. As Bhandari walked to the back of the car to get the spare tire, two men approached him. One lifted up his shirt to show a gun and told Bhandari, "Give me the money." Bhandari gave them the money. A red car then drove up and picked up the two men.

i. *Conspiracy to Commit Robbery of Hong Yul Moon (count 21)*

The prosecution also presented evidence that appellant and his co-conspirators planned to rob, but did not actually rob Hong Yul Moon, a liquor store owner. As detailed below, after the defendants were arrested, police recovered a notebook containing the words "KIA," "grisly" (which a police officer testified meant "gray" in Spanish) and the number "439." Moon drove a gray car with a license plate number ending in "439."

2. *Police Investigation*

After the hair fibers from a cap recovered from Kalam's car were matched to appellant in November 2012 (see *supra*, at part A.1.b [counts 3 & 4]), Detective Dennis Bopp and his team began conducting periodic surveillance on appellant and other suspects. On September 25, 2013, Detectives Marcelo Raffi and Joe Callian assisted with the surveillance. Detective Callian and his team monitored two cars -- a white Nissan Maxima and a silver Mazda -- while Detective Raffi monitored a gold Nissan Maxima. That afternoon, the detectives observed the three vehicles used in the attempt to rob Erdoglian (see *supra* at part A.1.a [counts 1 & 2]).

All three vehicles and their occupants were detained later that day. Alexander Padilla was the driver and Alexander Ortiz the passenger of the gold Maxima. A notebook recovered from the vehicle included abbreviations for cars, colors, times and, in one instance, cross-streets.

Juan Razo, Jose Cruz, and Andres Ardilla were the occupants of the silver Mazda. Ardilla was identified as the man who smashed the window of Erdoglian's vehicle. Items recovered from the Mazda included a punch tool and a screwdriver with a black handle.

Appellant was the only person in the white Maxima. Two cell phones, a folded knife, paper license plates with dealership names, a black-handled tool, a sweatshirt, and a backpack were recovered from

the vehicle. The backpack contained appellant's driver's license, a passport and two credit cards in the name of Euclides Salcido, and receipts from bank deposits. Following a search of appellant's apartment, Detective Bopp recovered a backpack containing a gun-cleaning kit, a bench grinder, a box of drywall anchors, two credit cards, and an expired Colombian passport in appellant's name.

In addition to the two cell phones recovered from the white Maxima, police also recovered a cell phone from Ortiz. During police interviews, the other suspects provided descriptions of their phones and phone numbers. Detective Sean Hansen, an expert in cell phone analysis, determined that the cell phones were used near the crime scenes on the dates of the crimes. Specifically, as to the two phones recovered from Blanco, 2013 phone records showed calls were made from those phones to other defendants' phones on May 13 (counts 11 and 12), May 28 (counts 13 and 14), June 8 (counts 15 and 16), July 8 (counts 17 and 18), September 9 (counts 19 and 20), and September 25 (counts 1 and 2). Detective Hansen testified he was unable to obtain 2012 records for those phones.

B. *Defense Case*

Appellant neither testified nor presented an affirmative case.

DISCUSSION

Appellant contends there was insufficient evidence to support his conviction on count 5 (robbery of Zepur Ourfalian). He further contends that with respect to the nine counts of conspiracy to commit robbery, the court erred in failing to instruct the jury on the lesser included offense of conspiracy to commit grand theft.

A. *Substantial Evidence Supported the Jury's Verdict on Count 5 (the Robbery of Ourfalian).*

Appellant contends the wrongful conduct charged in count 5 was theft, not robbery, as there was insufficient evidence for a reasonable jury to find that force or fear was used to deprive Ourfalian of personal

property from her person or immediate presence and against her will (§ 211). In determining whether the evidence is sufficient to support a conviction, "the reviewing court 'must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence -- that is, evidence which is reasonable, credible, and of solid value -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.]" (*People v. Vy* (2004) 122 Cal.App.4th 1209, 1224.) "In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts. [Citation.] . . . Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction. [Citation.]" (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

"'[T]he central element of the crime of robbery [is] the force or fear applied to the individual victim in order to deprive him of his property.' That deprivation of property occurs whether a perpetrator relies on force or fear to gain possession or to maintain possession against a victim who encounters him for the first time as he carries away the loot." (*People v. Gomez* (2008) 43 Cal.4th 249, 265 [affirming robbery conviction where defendant fired two shots at victim to prevent victim from following him]; see also *People v. Mungia* (1991) 234 Cal.App.3d 1703, 1707 ["It is the use of force or fear which distinguishes robbery from grand theft from the person."].) To establish the force or fear element of robbery, direct proof is not necessary. "Fear may be inferred from the circumstances in which a crime is committed or property is taken." *(People v. Holt* (1997) 15 Cal.4th 619, 690.) "Although the victim need not explicitly testify that he or she was afraid in order to show the use of fear to facilitate the taking [citation], there must be evidence from which it can be inferred that the victim was in fact afraid, and that such fear allowed the crime to be accomplished." (*People v. Mungia*, *supra*, 234 Cal.App.3d at p. 1709, fn. 2.) Likewise, force may be inferred from the circumstances. In *People v. Jones* (1992)

2 Cal.App.4th 867, the appellate court held that evidence the victim's finger was bloodied and her shoulder hurt by the force exerted by appellant in taking her purse was sufficient for a jury to find that appellant used force to commit robbery, not theft, as the force was actually sufficient to overcome the victim's resistance. (*Id.* at pp. 870-871.)

Here, Ourfalian testified that as she started her car, someone suddenly broke the passenger side window with what she believed was a long black gun. Ourfalian "stopped" for "a second" and "thought that the robberies [*sic*] was going on." The suspect grabbed the money bag and jumped into the back of a waiting silver sedan. From this evidence, it can be inferred that when the window was smashed, Ourfalian froze and did not resist the suspect's attempt to take the money bag because she believed she was the victim of an armed robbery. The fact that the jury did not convict on the gun allegation does not alter Ourfalian's testimony that she believed she saw a gun, a sight likely to instill fear. (Cf. *People v. Villa* (2007) 157 Cal.App.4th 1429, 1433 [holding fear element of robbery satisfied where defendant brandished a "metallic object" that victims believed was a gun, despite evidence that when defendant was arrested minutes later, he had a metal cigarette lighter, but no gun, on his person].) Moreover, even in the absence of a gun, the violent breaking of a car's glass is itself an act of force reasonably likely to instill fear in the average driver. On this record, substantial evidence supported the jury's finding that force or fear was used to take the money bag from Ourfalian.

B. *The Court did not Err in Failing to Instruct the Jury on the Lesser Included Offense of Conspiracy to Commit Theft.*

Appellant was charged with nine counts of conspiracy to commit robbery. The trial court denied appellant's request that the jury be instructed on the lesser included offense of conspiracy to commit theft

on all those counts.[3] Appellant contends the trial court erred, as there was substantial evidence to support giving the instruction. We disagree.

"'The trial court is obligated to instruct the jury on all general principles of law relevant to the issues raised by the evidence, whether or not the defendant makes a formal request.' [Citations.] 'That obligation encompasses instructions on lesser included offenses if there is evidence that, if accepted by the trier of fact, would absolve the defendant of guilt of the greater offense but not of the lesser.' [Citations.]" (*People v. Rogers* (2006) 39 Cal.4th 826, 866.) When conspiracy is charged, the jury must be instructed on "any lesser offenses which the jury could reasonably find to be the true objects of the conspiracy." (*People v. Fenenbock* (1996) 46 Cal.App.4th 1688, 1706.)

Here, as there was no direct testimony, the object(s) of the conspiracy must be inferred from the crimes committed pursuant to the conspiracy. The evidence shows that appellant and his co-conspirators planned to steal large sums of cash being transported by individuals from small businesses, such as gas stations and 7-Eleven stores. Because of the financial impact on the businesses, resistance would be expected. Indeed, several victims did resist (Erdoglian, Sekhon and Negonon), and their resistance was met with violence. Thus, it is apparent that the conspirators planned to use force or fear to overcome the victims' resistance.

The conspirators' actual robberies and theft confirmed their plan to use force or violence. Except for the incident involving Minasyan, the conspirators used force or fear to take the money (or attempt to take it in the case of Erdoglian): a conspirator repeatedly punched Erdoglian

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[3] On the substantive counts, the jury was instructed on the lesser included offense of grand theft as to counts 3, 5, and 19, but convicted appellant of (the greater offense of) robbery on those counts.

and attempted to choke her; a conspirator pointed a gun at Kalam and broke his car's window; a conspirator smashed Ourfalian's car window with a handgun causing her to believe an armed robbery was occurring; a conspirator pulled a money bag away from Sekhon's grasp; two conspirators punched Negonon; a conspirator threatened Ayyaz and indicated he was armed; and two conspirators approached Bhandari, one of whom showed Bhandari a gun and instructed him to give them the money bag. On this record, no substantial evidence would support a finding that appellant and his co-conspirators planned to steal the money bag without using any force or fear.[4]

Appellant notes no force or fear was used against Minasyan, and appellant was charged only with grand theft in count 17. He contends that a jury could have found that he and his co-conspirators planned to commit the other crimes in the same manner as the theft of Minasyan, although in some instances force or fear was eventually used. From this, appellant argues that he and his co-conspirators "planned a non-confrontational speedy snatch of the money, even if this plan devolved during one or more of the incidents." We are not persuaded.

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[4] As noted, the evidence shows that in several instances, the conspirators planned to intimidate the victims by brandishing weapons or similar objects. Indeed, several witnesses (Kalam, Ourfalian, Ayyaz, Bhandari) testified that at least one of their assailants was armed during the robberies. Although the jury found not true the firearm use allegations as to appellant, that finding is not dispositive. Even were no conspirator actually armed, where a defendant informs the victim he is armed, the victim's compliance with the defendant's demand is sufficient to support a finding of fear. (See, e.g., *People v. James* (1963) 218 Cal.App.2d 166, 168-170 [where defendant had his hand in his pocket and shouted at victim not to do anything or she would get hurt, fear element of robbery was satisfied because victim complied, believing defendant had a gun]; *People v. Jackson* (1967) 253 Cal.App.2d 68, 73-74 [where defendant stated he was armed and victim gave him money because he was afraid, fear element of robbery was satisfied].)

Significantly, force or fear was used in every incident except the one involving Minasyan, indicating the latter was the exception, not the rule. Based on the other incidents, it is apparent that the conspirators were prepared to use force or fear to steal the cash from Minasyan; only his act of exiting the car without locking it or taking the money bag allowed them to snatch the bag without the need for force. In short, the trial court did not err in denying appellant's request for an instruction on the lesser included offense of conspiracy to commit theft.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.