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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN ISLAS,

Defendant and Appellant.

B267993

(Los Angeles County
Super. Ct. No. NA101492)

APPEAL from a judgment of the Superior Court of Los Angeles County,
James Otto, Judge. Affirmed.

Christine M. Aros, 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, Senior Assistant Attorney General, Margaret E. Maxwell,
Deputy Attorney General, for Plaintiff and Respondent.

A jury convicted appellant Juan Islas of second degree robbery. (Pen. Code, § 211, subd. (a).)¹ Islas thereafter admitted a prior conviction alleged as a strike and as a prior serious felony. (§§ 667, subds. (b)-(j); 1170.12; 667, subd. (a)(1).) The trial court struck Islas's strike, and sentenced him to an aggregate term of seven years in state prison. Islas argues insufficient evidence supports his robbery conviction because there was no evidence he used force or fear. We disagree and affirm.

FACTS

Background

Michael Angeles and Alex Vargas worked as loss prevention officers for Superior Grocers in Long Beach. On March 25, 2015, both men were on duty when Islas and Priscilla McMichael entered the store. Officer Vargas watched Islas select a three-pack of beer from the refrigeration aisle and then walk several aisles over to where McMichael stood. Officer Angeles saw McMichael place several items in her purse, including shampoo and lotion bottles. Officers Angeles and Vargas then watched Islas approach McMichael to hand her the beer, and McMichael placed the beer in her purse with the other items. Islas and McMichael exited the store without paying. Officers Angeles and Vargas followed them outside.

Officers Angeles and Vargas approached McMichael and Islas in the parking lot. The two men identified themselves as loss prevention officers, displayed their badges, and asked McMichael and Islas to come back inside the store. McMichael and Islas attempted to walk away, but Officer Vargas positioned himself in front of McMichael to prevent her from leaving. McMichael then became hysterical and screamed at Officer Vargas. Islas began walking down a nearby alleyway.

Officer Angeles testified McMichael began swinging her purse at Officer Vargas, yelling that he could have the merchandise back, and throwing the items from her purse in his direction. One of these items, a lotion bottle, hit Vargas in the chest and exploded on him. As Vargas grabbed McMichael's purse, Islas returned to the scene. He grabbed

¹ All further undesignated section references are to the Penal Code.

Officer Vargas's right forearm with his left hand, curled his right hand into a fist, and raised it above his right shoulder. Officer Angeles warned Islas that the situation would escalate to a robbery if he hit him or Officer Vargas. Islas then let go of Officer Vargas's arm, and both Islas and McMichael fled the scene.

Officer Vargas' testimony was similar, but varied slightly. Vargas testified he grabbed McMichael's purse as she attempted to leave the parking lot. Both individuals engaged in a "tug-of-war" over the purse. McMichael's purse had a cross-body strap, so the tug-of-war took place while she was wearing it. Islas then ran back, grabbed Vargas's hand, and raised his fist in the air at Vargas. Vargas told Islas that if he punched him or Angeles, the situation would be considered a robbery. Islas lowered his hands, Vargas released McMichael's purse, and McMichael began throwing the items at Vargas as she and Islas fled down an alleyway.

Officers Angeles and Vargas then called 911 and followed McMichael and Islas. McMichael tripped and fell in the alleyway, but Islas continued running and got on the Metro train. Officers Angeles and Vargas detained McMichael. Shortly thereafter, Long Beach Police Officer Timothy Redshaw arrived in the alleyway, handcuffed McMichael, and searched her purse. He found a can of beer in her bag, but did not note this on his police report.

Angeles testified that he believed that the items recovered from McMichael's purse were not all of the ones he saw McMichael put into her purse in the store.

The police sent out a radio dispatch informing officers that a robbery suspect was on board the Metro train. Officer Edmund Moscoso responded, located the train, and detained Islas and two other individuals. Angeles and Vargas then identified Islas as the robbery suspect in a field show up, and the police arrested Islas.

The Trial

The People filed an information charging Islas with second degree robbery (count 1; § 211.) The information also alleged that Islas suffered a prior conviction that qualified as both a serious felony and a strike. (§§ 667, subds. (a), (b)-(j); 1170.12.) Islas pleaded not guilty and denied the special allegations. A jury found Islas guilty of second

degree robbery. Islas then admitted the prior allegations. He received a sentence of seven years in state prison, comprised of the low term of two years and an additional five years for the prior serious felony allegation. The court struck the prior strike allegation for sentencing purposes pursuant to section 1385. The trial court ordered Islas to pay a variety of fines and fees and awarded him 241 days of presentence custody credit.

Islas timely appealed

DISCUSSION

Islas contends the evidence is insufficient to support the robbery conviction. Specifically, he argues the evidence did not establish he used force or fear with the intent to retain the victim's property. We disagree.

When an appellant challenges the sufficiency of evidence supporting a jury's verdict, the reviewing court examines whether there was substantial evidence, considered as a whole, to permit a reasonable trier of fact to find the defendant guilty of the charged crime beyond a reasonable doubt. (*Jackson v. Virginia* (1979) 443 U.S. 307, 318-319; see also *People v. Smith* (2014) 60 Cal.4th 603, 617; *People v. Lindberg* (2008) 45 Cal.4th 1, 27.) The court's standard for determining what is "substantial evidence" is whether the evidence is "credible and of solid value." (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) One witness's testimony can be sufficient evidence to sustain a conviction. (*People v. Young* (2005) 34 Cal.4th 1149, 1181 (*Young*), citing *People v. Allen* (1985) 165 Cal.App.3d 616, 623.)

The reviewing court presumes every fact that the trier of fact could reasonably have deduced from the evidence in support of the judgment. (*People v. Hajek and Vo* (2014) 58 Cal.4th 1144, 1197; see also *People v. Lewis* (1990) 50 Cal.3d 262, 277; *People v. White* (2014) 230 Cal.App.4th 305, 315, fn. 13.) "[T]he relevant question is whether, after viewing the evidence in light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (*People v. Staten* (2000) 24 Cal.4th 434, 460.) Therefore, the reviewing court will not reverse a judgment for insufficient evidence unless "upon no

hypothesis whatever is there sufficient substantial evidence to support [the conviction].””” (*People v. Hughes* (2002) 27 Cal.4th 287, 370.)

California law defines a robbery as “the felonious taking of personal property in the possession of another . . . and against [the person’s] will, accomplished by means of force or fear.” (§ 211.) The distinguishing factor that turns a larceny into a robbery is the application of force or fear to the victim to permanently deprive him of his property. (*People v. Gomez* (2008) 43 Cal.4th 249, 265; *People v. Marquez* (2000) 78 Cal.App.4th 1302, 1308.) Any amount of force or fear beyond the seizure of the property that occurs concurrently with the larceny is sufficient to elevate the charge to robbery. (*People v. Morales* (1975) 49 Cal.App.3d 134, 139.) Since California’s robbery jurisprudence divides the taking of property into two elements – gaining physical possession of the property (“caption”) and the carrying away of the property (“asportation”) – the application of fear or force in either stage of the crime is sufficient to transform larceny into robbery. (See *People v. Gomez, supra*, 43 Cal.4th at pp. 264-265.) Therefore, even if the perpetrator acquires wrongful possession peacefully, mere theft will become robbery if he or she uses force or fear while moving the property. (*Miller v. Superior Court* (2004) 115 Cal.App.4th 216, 222; *People v. Cooper* (1991) 53 Cal.3d 1158, 1165, fn. 8.) Additionally, a defendant can be found guilty of robbery if he uses force or fear either to acquire original possession of the property or resist attempts to retake the property. (*People v. Estes* (1983) 147 Cal.App.3d 23, 27-28 (*Estes*); see also *People v. Anderson* (1966) 64 Cal.2d 633, 638-639.)

Islas concedes that he used force or fear against Officers Angeles and Vargas during the incident, but claims that this force or fear should not elevate the charge from larceny to robbery. He contends Officer Angeles’ testimony shows that all of the items stolen from the store had been thrown out of McMichael’s purse at the time he grabbed Officer Vargas’s arm and brandished a fist at him, and thus McMichael surrendered the stolen merchandise before Islas intervened. He contends that “[t]he act of abandonment completed and ended the theft, and the subsequent use of force could not complete a robbery.” Islas argues that “[i]f a theft is not being accomplished – if no caption or

asportation is occurring – then there is no ongoing theft to aggravate into robbery.” We are not persuaded.

Islas correctly contends that if a defendant “truly abandoned the victim’s property before using force, then, of course he could be guilty of theft, but not of an *Estes* type robbery.” (*People v. Pham* (1993) 15 Cal.App.4th 61, 68.) However, the prosecution presented evidence that all the stolen property had not been abandoned. Officer Vargas testified that he was certain that the throwing of the items from the purse occurred after the struggle for the purse. Further, Officer Redshaw testified that he saw a can of beer in McMichael’s purse well after the incident ended. Officer Angeles testified that not all of the items McMichael stole from the store and concealed in her purse were recovered in the parking lot.

Islas is correct that Officer Redshaw did not note in his police report that additional items were recovered from the Islas and McMichael, but he did testify to that fact. The jury was entitled to believe his testimony, as “[r]esolution of conflicts and inconsistencies in the testimony is the exclusive province of the [jury].” (*Young, supra*, 34 Cal.4th at p. 1181.) It was the jury’s prerogative to give greater credibility to Officer Vargas’s testimony that the items had not been completely abandoned at the time force was used. Further, the jury could accept Officer Redshaw’s testimony that he recovered a beer although he did not report it. Also, the jury could believe Officer Angeles’s testimony. The jury needed only to believe *one* of these witnesses on the matter to convict Islas of robbery. (*Ibid.*)

Islas also argues that his conviction should be reversed because he lacked the intent to steal the property when he used force against Officer Vargas. Officer Vargas testified that Islas grabbed his arm *after* he engaged in a “tug-of-war” with McMichael over her cross-body purse. Islas contends his use of force was a “defensive response” to Vargas’s “aggressive behavior” against McMichael. Islas claims that if he intended to steal, he would have grabbed the purse rather than Vargas’s hand. Furthermore, he claims that McMichael would not have thrown the items at Vargas if their intent was to retain the items, nor would they have fled without the merchandise once Vargas let go of

the purse. Therefore, Islas submits that the only “reasonable inference” in this situation was that he was protecting McMichael from Vargas.

However “reasonable” this inference might be, it is not the inference the jury adopted. “It is robbery if the defendant committed a forcible act against the victim motivated by the intent to steal. . . .” (*People v. Anderson* (2011) 51 Cal.4th 989, 991-992.) Even if the defendant did not intend to instill fear or use force against the victim, the court will still sustain a robbery conviction if fear or force existed. (*Ibid.*) Robbery is not a crime that terminates with the taking, but continues until the defendant has “won his way to a place of temporary safety.” (*People v. Carroll* (1970) 1 Cal.3d 581, 585.) Therefore, a defendant can be convicted of theft, even if the taking already occurred, if he or she uses force while attempting to escape. (*Estes, supra*, 147 Cal.App.3d at p. 28.) Violence at any point in the commission of the crime will negate any peacefulness in the process. (*People v. Anderson, supra*, 51 Cal.4th at p. 994.)

The jury’s verdict demonstrates it found that Islas used force at some point during the taking, moving, or escape with the property with the intent to steal the property. The jury examined the same facts that Islas now presents and found it wanting. We must do so as well.

DISPOSITION

The judgment is affirmed.

BIGELOW, P.J.

We concur:

FLIER, J.

GRIMES, J.