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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Petitioner,

v.

THE SUPERIOR COURT OF  
LOS ANGELES COUNTY,

Respondent;

CRAIG HUNT,

Real Party in Interest.

B241126

(Los Angeles County  
Super. Ct. No. VA121901)

ORIGINAL PROCEEDINGS in mandate. Peter Espinoza, Judge. Writ granted.

Steve Cooley, District Attorney, Irene Wakabayashi and Phyllis C. Asayama, Deputy District Attorneys, for Petitioner.

No appearance for Respondent.

Ronald L. Brown, Public Defender, Albert J. Menaster, Christopher Capestro and Albert Camacho, Jr., Deputy Public Defenders, for Real Party in Interest.

Real party in interest Craig Hunt (Hunt) was charged by information with four counts: count 1, kidnapping to commit a robbery on October 1, 2011 (Pen. Code, § 209, subd. (b)(1));<sup>1</sup> count 2, first degree residential robbery on October 1, 2011 (§ 211); count 4,<sup>2</sup> first degree burglary on October 30, 2009 (§ 459); and count 5, first degree residential robbery on October 30, 2009 (§ 211). The People petition for a writ of mandate to overturn the order of the superior court, granting Hunt's section 995 motion to set aside count 1. We grant the petition.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *Preliminary Hearing Evidence*

On October 1, 2011, Maria Elena Dupone lived in a downstairs, one-room apartment on Vinevale Avenue in the city of Bell. Her apartment is one of two units (the other being upstairs) located behind a large house that sits at the front of the property.

Around 7:20 a.m., Dupone was sitting outside her apartment drinking coffee when someone wearing a mask, later identified as Hunt, grabbed her by the neck. He held a gun to her head, told her not to yell, and dragged her into her apartment, past the kitchen and to her bedroom – a distance of approximately 25 to 30 steps. There, he demanded money. She took some money from a drawer and gave it to him. He then pushed her onto the bed, tied her hands, and gagged her.

A neighbor, Lucy Velina Serrano, was awakened by the sound of glass breaking and a woman screaming for help in Spanish. She called 911. City of Bell Police Officer Mark Logan and two other officers responded to Dupone's address

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<sup>1</sup> All further statutory references are to the Penal Code.

<sup>2</sup> Count 3 was dismissed on the People's motion.

and split up to investigate. Officer Logan went to the back of the property and saw a broken coffee mug and some liquid on the ground in front of Dupone's apartment door. He also noticed that a metal security door and the door to the apartment were open.

Officer Logan went to get one of the other officers, Officer Jonathan Walker. When they returned, the metal security door was closed. Officer Logan saw Hunt walking away, and ordered him to stop at gunpoint. Hunt was wearing black clothing, including black gloves. As Officer Walker handcuffed Hunt, Officer Logan noticed a handgun in Hunt's pocket, which was later determined to be a BB or pellet gun.

After Officer Walker advised Hunt of his *Miranda*<sup>3</sup> rights, Hunt said that he robbed "the lady," and that she was tied up in the bedroom. Officer Walker found Dupone past the kitchen, at the end of the hallway, sitting on the floor outside her bedroom, bound and gagged.

Hunt was transported to the police station, where \$205 in cash and iPod earphones were found on his person. Officer Walker interviewed Hunt at the station. Hunt said that he had jumped over the wall behind Dupone's house to rob her. He told Officer Walker that he shoved Dupone, held a gun to her head, dragged her down the hallway, and made her open a locked drawer to give him money. He then tied her up and gagged her so she could not scream for help.

When Officer Walker entered Dupone's name into the database to write his report, he learned that she had earlier been the victim of similar crime. According to Dupone, a little more than two years earlier, on October 30, 2009, she arrived home from work with a friend and saw that her clothes were scattered all over her apartment. A man wearing a ski mask and holding a machete emerged from her

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<sup>3</sup> *Miranda v. Arizona* (1966) 384 U.S. 436.

closet, threatened her and her friend, and demanded money. Dupone gave him \$200, and he left. Dupone subsequently learned that he had cut the telephone wires.

After learning of the earlier crime, Officer Walker interviewed Hunt again. Hunt admitted that the October 2011 crime was not the first time he had robbed Dupone. He told Officer Walker about the previous robbery and provided a written statement.

### *Procedure*

At the preliminary hearing, defense counsel moved to dismiss count 1, kidnapping to commit robbery on October 1, 2011 (§ 209, subd. (b)(1)). He argued that Hunt's movement of Dupone from outside her apartment and into her bedroom was incidental to the robbery and was thus insufficient to support a charge of aggravated kidnapping. The magistrate agreed and granted the motion, but held Hunt to answer on the other charges.

Thereafter, the district attorney filed an information charging Hunt with the counts to which he was held to answer, and also refiled, as count 1, the charge of kidnapping for robbery. Hunt filed a section 995 motion to dismiss the latter charge. The superior court granted the motion, reasoning (as had the magistrate) that Hunt's movement of Dupone was incidental to the robbery. The court granted a stay of its ruling for the People to seek a writ. The People petitioned for a writ of mandate to this court. We issued an alternative writ of mandate ordering the superior court to vacate its May 3, 2012 order granting Hunt's motion, or to show cause why a peremptory writ of mandate should not issue. The superior court did not vacate its ruling, and the matter is now before us.

## DISCUSSION

We conclude that the superior court erred in granting Hunt's section 995 motion to dismiss the charge of kidnapping for the purpose of robbery. "Section 995 provides that an information 'shall be set aside' if the defendant has been 'committed without reasonable or probable cause.' ""Probable cause is shown if a man of ordinary caution or prudence would be led to believe and conscientiously entertain a strong suspicion of the guilt of the accused.'" [Citations.]' [Citation.]" (*People v. Plengsangtip* (2007) 148 Cal.App.4th 825, 835 (*Plengsangtip*).)

"In determining if charges in an information can withstand a motion under section 995, neither the superior court nor the appellate court may reweigh the evidence or determine the credibility of the witnesses. [Citations.] Ordinarily, if there is some evidence in support of the information, the reviewing court will not inquire into its sufficiency. [Citations.] Thus, an indictment or information should be set aside only when there is a total absence of evidence to support a necessary element of the offense charged. [Citations.]

"[A]lthough there must be some showing as to the existence of each element of the charged crime [citation] such a showing may be made by means of circumstantial evidence supportive of reasonable inferences on the part of the magistrate.' [Citation.] 'Every legitimate inference that may be drawn from the evidence must be drawn in favor of the information.' [Citations.] Thus, the ultimate test is that ""[a]n information will not be set aside or prosecution thereon prohibited if there is some rational ground for assuming the possibility that an offense has been committed and the accused is guilty of it."" [Citation.]" (*People v. Superior Court (Jurado)* (1992) 4 Cal.App.4th 1217, 1226, italics omitted (*Jurado*).)

“[K]idnapping for robbery, or aggravated kidnapping, require[s] movement of the victim that (1) was not merely incidental to the commission of the robbery, and (2) substantially increased the risk of harm over and above that necessarily present in the crime of robbery itself. [Citations.] These two elements are not mutually exclusive but are interrelated. [Citations.]” (*People v. Vines* (2011) 51 Cal.4th 830, 869-870; § 209, subd. (b); see also *People v. Leavel* (2012) 203 Cal.App.4th 823, 833 (*Leavel*).)

““With regard to the first prong, the jury considers the “scope and nature” of the movement, which includes the actual distance a victim is moved. [Citations.] There is, however, no minimum distance a defendant must move a victim to satisfy the first prong.’ [Citation.] We also consider the ‘context of the environment in which the movement occurred.’ [Citation.] ‘This standard suggests a multifaceted, qualitative evaluation rather than a simple quantitative assessment.’ [Citation.]

“The second prong ““includes consideration of such factors as the decreased likelihood of detection, the danger inherent in a victim’s foreseeable attempts to escape, and the attacker’s enhanced opportunity to commit additional crimes. [Citations.] The fact that these dangers do not in fact materialize does not, of course, mean that the risk of harm was not increased.”” [Citation.]” (*Leavel, supra*, 203 Cal.App.4th at pp. 833-834.)

Drawing every legitimate inference from the evidence in favor of the information (*Jurado, supra*, 4 Cal.App.4th at p. 1226), and understanding the interrelated nature of the inquiries whether the forced movement of Dupone was incidental to the robbery and substantially increased the risk of harm to her (*Leavel, supra*, 203 Cal.App.4th at pp. 833-834), there is probable cause to believe that Hunt’s movement of Dupone satisfied section 209, subdivision (b)(1). The

context here is significant. Without first demanding money, Hunt accosted Dupone while she was drinking coffee outside her apartment, where they were potentially visible to others, and Dupone could try to summon help or flee. Hunt held a gun (later determined to be a BB or pellet gun) to Dupone's head, told her not to yell, and dragged her inside the apartment, past the kitchen, down the hallway, and into her bedroom, a distance of about 25 to 30 steps. Inside the apartment, Dupone was concealed in an enclosed area, away from the view and hearing of others, and at much greater danger and disadvantage should she try to flee. Hunt did not demand money until they were in the bedroom. When he did, Dupone took money from a drawer and gave it to him. He then bound and gagged her, and left.

From this evidence, there is reasonable cause to believe that Hunt's movement of Dupone achieved the following goals: it decreased the risk of detection (moving her from the open to a place of concealment in her own home); it increased the risk of harm to Dupone (she was isolated and alone with Hunt, who held a weapon, and she was ultimately bound and gagged, a condition that itself could result in injury); it increased the danger should Dupone try to escape (the area was enclosed, making it more likely Dupone would be apprehended and injured if she tried to flee); and it enhanced Hunt's opportunity to commit other crimes (Dupone was bound and gagged in her own residence and rendered helpless). (See *People v. Dominguez* (2006) 39 Cal.4th 1141, 1152.) Thus, the evidence was sufficient to establish probable cause to believe that the forced movement of Dupone 25 to 30 steps from the patio outside her apartment, through the kitchen, down the hallway, and into her bedroom, was not merely incidental to the robbery, but rather, in the overall context, constituted "substantial" movement,

and resulted in a substantially increased risk of harm beyond that inherent in the crime of robbery itself. (*Dominguez, supra*, at p. 1152.)

Hunt contends that the movement of Dupone into the bedroom was merely incidental to the commission of the robbery because he learned from the prior robbery that Dupone's money was in her bedroom and took her there in order to commit the robbery. He also contends that there was no increased risk of harm because the sole purpose of the asportation was to commit the robbery. Perhaps a jury, considering these arguments, might find the evidence insufficient to prove kidnapping for robbery beyond a reasonable doubt. Regardless, at this stage of the proceeding we have no doubt that there is some rational ground for assuming the possibility that Hunt's forcible movement of Dupone was more than incidental to the robbery and substantially increased her risk of harm beyond that inherent in robbery. (*Jurado, supra*, 4 Cal.App.4th at p. 1226.) We therefore grant the People's petition for a writ of mandate.



## **DISPOSITION**

Let a peremptory writ of mandate issue directing respondent court to vacate its order granting Hunt's section 995 motion to set aside count 1 of the information, and to issue a new order denying the motion, reinstating count 1, and setting the matter for trial.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.