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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. TAISHA WILLIAMS, Defendant and Appellant.	B239039 (Los Angeles County Super. Ct. No. TA119588)

APPEAL from a judgment of the Superior Court of Los Angeles County. Kelvin D. Filer, Judge. Affirmed.

John Ralphling, 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, Senior Assistant Attorney General, Lawrence M. Daniels and Allison H. Chung, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Taisha Williams was convicted, following a jury trial, of one count of second degree robbery in violation of Penal Code section 211[1] and one count of assault with a deadly weapon, an automobile, in violation of section 245, subdivision (a)(1). The trial court suspended imposition of sentence and placed appellant on formal probation for three years. Codefendant Latasha Rougely was convicted of one count of second degree robbery and sentenced to three years in state prison. She is not a party to this appeal.[2]

Appellant appeals from the judgment of conviction, contending that there is insufficient evidence to support the verdict and further contending that the trial court erred in failing to stay sentence for the assault conviction pursuant to section 654. We affirm the judgment of conviction.

Facts

On August 18, 2011, Christian Cartagena was waiting at a bus stop at the intersection of Figueroa and Century Boulevards. He was listening to music on his iPhone, which was attached to his waistband. His wallet was also attached to his waistband. Appellant and codefendant Rougely approached him from behind. Rougely said, "Give me your wallet." Cartagena felt a hard object on the back of his head. He turned, saw Rougely pointing a black revolver at him and appellant holding out her hand toward him. Cartagena gave his wallet to appellant. Rougely demanded the iPhone, and Cartagena handed it to appellant.

Rougely put the revolver in her purse. Appellant ran north on Figueroa. Cartagena followed her. When he reached the corner, he turned, looked back and saw Rougely pick up something from the ground in the area of the bus stop. Appellant ran to a parked white car and got in. Cartagena dove head first through the open driver's window of the car in an attempt to retrieve his iPhone, which was visible in appellant's

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

[2] Rougely filed a notice of appeal, but on June 15, 2012 requested that her appeal be dismissed. We dismissed her appeal on June 18, 2012.

right hand. His body from the waist up was inside the car, while the rest of his body was outside the car.

Appellant accelerated the car, drove down Figueroa, and turned onto Century Boulevard. Appellant grabbed Cartagena's head and face and tried to push him out of the car. The lower half of his body was pressed against the car with his feet dragging on the ground. Cartagena attempted to push himself all the way inside the car. When he could not get inside, he said, "Stop let me go." Appellant replied, "You got yourself into this, now you're going to kill yourself." She continued to try to push him out the window.

Appellant lost control of the car and crashed into a fire hydrant and light pole. The driver's side airbag deployed, hitting Cartagena on the left side of the body. The force of the various impacts caused Cartagena to fly out of the car and land on the ground. Less than one minute had passed since appellant began driving.

Appellant started to run away, returned to the car and got a one-year old baby out of the back seat, and then got into a newly arrived car with the baby. Cartagena screamed for bystanders to call the police and stop appellant.

Police officers and paramedics came to the scene. A bystander pointed out Rougely and appellant to police.[3] Rougely was standing next to a black Mercedes and appellant was inside it. Officers searched Rougely's purse and found Cartagena's school identification card and check cashing card, and a receipt for a purchase made by Cartagena. These items were in Cartagena's wallet when it was stolen. Police officers searched for but did not find a revolver or the iPhone.

In their defense, appellant and Rougely offered testimony that painted Cartagena as an aggressor who attacked appellant without provocation, dropping his wallet in the process.

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[3] The bystander, Enrique Rodriguez, had earlier seen Cartagena running after appellant. He followed the pair in his truck. His attention was drawn to Rougely when she threw a rock at his truck. Rodriguez then saw Rougely at the collision site, returned to the area where Rougely had thrown the rock and found Cartagena's wallet on the ground. Rodriguez went back to the collision site, and showed the wallet to Cartagena. Cartagena identified the wallet as his, and Rodriguez returned it to him.

Discussion

1. Sufficiency of the evidence - assault

Appellant contends that there is insufficient evidence to support her conviction for assault with a deadly weapon because the evidence shows that she was reckless in driving her car but was trying to avoid injury to Cartagena.

"'In reviewing a challenge to the sufficiency of the evidence, we do not determine the facts ourselves. Rather, "we examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—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." [Citations.] We presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] The same standard of review applies to cases in which the prosecution relies primarily on circumstantial evidence and to special circumstance allegations. [Citation.] "[I]f the circumstances reasonably justify the jury's findings, the judgment may not be reversed simply because the circumstances might also reasonably be reconciled with a contrary finding." [Citation.] We do not reweigh evidence or reevaluate a witness's credibility. [Citation.]'" (*People v. Nelson* (2011) 51 Cal.4th 198, 210.)

Assault is a general intent crime. It "does not require a specific intent to cause injury or a subjective awareness of the risk that an injury might occur. Rather, assault only requires an intentional act and actual knowledge of those facts sufficient to establish that the act by its nature will probably and directly result in the application of physical force against another." (*People v. Williams* (2001) 26 Cal.4th 779, 790.) A defendant "need not be subjectively aware of the risk that a battery might occur." (*Id.* at p. 788.) He need only be aware of "facts that would lead a reasonable person to realize that a battery would directly, naturally and probably result from his conduct." (*Ibid.*) Recklessness or criminal negligence is not enough to support an assault conviction because a defendant cannot be convicted of assault "based on facts he should have known but did not know." (*Ibid.*)

"[A]ny operation of a vehicle by a person knowing facts that would lead a reasonable person to realize a battery will probably and directly result may be charged as an assault with a deadly weapon." (*People v. Wright* (2002) 100 Cal.App.4th 703, 706.)

Here, there is ample evidence that appellant actually intended to commit a battery on Cartagena by dislodging him from the car while it was moving. She accelerated the car with Cartagena half in and half out of the driver's side window and tried to push him all the way out the window. When Cartagena asked appellant to stop the car, she replied, "You got yourself into this, now you're going to kill yourself." During this time she was still trying to push Cartagena out of the window. Dislodging Cartagena from the window of a moving car would have resulted in a battery.

Further, even without Cartagena's testimony about appellant's statement and her pushing, there would be sufficient evidence to support appellant's assault conviction. Appellant was aware that she was accelerating her car, aware that Cartagena was half inside and half outside of the driver's compartment of the car and that she was struggling with him, and aware that she was on a city street lined with cars, utility poles, buildings and various other large objects. A reasonable person would realize that the struggle with Cartagena was impeding her ability to see and to control the car and that, given the environment, a collision would probably result from her driving, and would cause a battery on Cartagena.

Appellant's reliance on *People v. Cotton* (1980) 113 Cal.App.3d 294 and *People v. Jones* (1981) 123 Cal.App.3d 83 is misplaced. In both cases, the defendants were driving at high speeds in an attempt to evade police pursuits, and the defendants made visible efforts to avoid hitting another car, but collided with that car anyway. Here, appellant was not simply driving fast, but had the upper half of a person inside her car and was struggling with that person. This greatly increased the likelihood of a collision.

2. Section 654

Appellant contends that the trial court erred in failing to stay sentence on the assault conviction pursuant to section 654. Respondent contends that this issue is not ripe for adjudication. We agree with respondent.

At the sentencing hearing, the trial court stated: "So as to both counts 1 and 2, imposition of sentence suspended. You're going to be placed on formal probation for three years under the following terms and conditions. First serve 100 days in county jail. Credit for 100 days you served. That's 50 actual, and 50 good time work time credits. . . ." Appellant's trial counsel asked, "And on the issue of 654, on count 2, would the court stay the punishment on count 2 under Penal Code section [6]54?" The court replied, "I don't know if I have to do that at this point since I'm not sentencing her on either one of them. I don't think I need to make that determination at this time."

Section 654 states: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." Thus, section 654 "does not allow any multiple punishment, including either concurrent or consecutive sentences. [Citation.]" (*People v. Deloza* (1998) 18 Cal.4th 585, 592.)

When imposition of sentence is stayed, and probation granted, section 654 does not apply. "Because sentence was not imposed . . . , there is no double punishment issue. The section 654 issue should be presented to a court upon any future attempt to impose a double punishment . . . in the event of a probation violation." (*People v. Wittig* (1984) 158 Cal.App.3d 124, 137.) "Probation is an act of grace and clemency designed to allow rehabilitation [citations] and is not within the ambit of the double punishment proscription of . . . section 654. [Citations.]" (*People v. Stender* (1975) 47 Cal.App.3d 413, 425, overruled on other grounds in *People v. Martinez* (1999) 20 Cal.4th 225, 240.)

Appellant acknowledges that *Wittig* and *Stender, supra,* are directly on point, and that she cannot cite any contrary cases. She argues that for reasons of common sense,

reason and the fair and efficient administration of justice, this Court should not follow *Wittig* and *Stender*.

Appellant contends that even if probation is considered an act of clemency, the court may still punish the defendant by imposing jail time and so section 654 should apply. Probation comes with various terms and conditions. The fact that one of those conditions is jail time does not transform probation into punishment. Appellant also contends that it is more efficient to have the court which tried the case decide any section 654 issue, rather than a later court hearing a probation violation claim. There are no facts in the record to support this efficiency argument.

Disposition

The judgment is affirmed.

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ARMSTRONG, Acting P. J.

We concur:

MOSK, J.

KRIEGLER, J.