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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Z.O., a Person Coming Under the Juvenile Court Law.	B265210 (Los Angeles County Super. Ct. No. YJ37831)
THE PEOPLE, Plaintiff and Respondent, v. Z.O., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Irma J. Brown, Judge. Affirmed.

Lynette Gladd Moore, 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, Steven D. Matthews, Supervising Deputy Attorney General, and Rama R. Maline, Deputy Attorney General, for Plaintiff and Respondent.

Minor Z.O. appeals from a juvenile court order confining her to a community camp after the court found that she committed second degree robbery against a person who was 65 years or older. Minor argues the evidence was insufficient to sustain the court's order. We disagree and affirm.

BACKGROUND

Lidia Vargaz, age 79, was waiting alone on a bench for a bus in Inglewood at Arbor Vitae and Eucalyptus on April 24, 2015, around 12:30 p.m. Vargaz had a purse, which contained $225 and identification cards, sitting next to her and had her left arm through its straps. Vargaz, who speaks only Spanish, testified a young woman sat on the bench next to her and asked her a question in English. Vargaz noticed the young woman appeared to be with a group of other youths who were standing behind the bench. Vargaz was unable to determine how many youths were in the group or see their faces. Somewhere between 10 and 20 minutes later, Vargaz felt her bag being snatched from behind. In court, Vargaz testified she saw "a big large hand grabbing her bag" and denied telling the police that she felt several hands grabbing at her purse or on her body. One of the police officers called to the scene testified as an impeaching witness, however, that on the day of the robbery Vargaz told him she had felt "multiple hands" which "tugged at her person and pulled at her property" during the snatching. The officer also testified Vargaz told him she had seen a young woman clutching her purse as the young woman fled from the area. The force and fright of the snatching caused Vargaz to fall forward off the bench onto the ground. Vargaz cried, "Help! Help! Ayuda!"

Three witnesses came to Vargaz's aid. The first was Alvaro Espinoza. Espinoza was across the street from the bus stop on a smoke break, "looking around" like he "normally" did when he saw "a group of" "approximately five or six" "people around" Vargaz who appeared to be "regular people waiting for the bus." In his words, "everything seemed normal." Espinoza testified he turned away, and when he turned back to face the bus stop he saw Vargaz "struggling to get up from the floor" and "all these kids just running away" in the "same direction." He denied in court actually witnessing the event. Espinoza jumped into action, following the fleeing youths in his

vehicle. As he was chasing the youths, he did not see any of them with a purse, but he did notice that one was wearing a "yellow sweatshirt." Espinoza later identified in a "field show-up" several of the youths, including minor, he had seen by the clothes they were wearing. He again identified minor in court. Although Espinoza testified he believed his in-court testimony was accurate, one of the reporting officers testified that on the day of the crime Espinoza told the officer he had "personally" seen four individuals "surround" Vargaz and that he saw one grab Vargaz's purse.

The other two witnesses that came to Vargaz's aid were Alondra Becerra and her mother, Martina Becerra, both of whom speak Spanish. Alondra Becerra testified her mother and she were just arriving home to their residence across the street from the bus stop when she noticed three girls "running down" the side of the street where the bus stop was located. Initially, nothing unusual struck her about the group of girls, but then she saw Vargaz "getting up, starting to walk, freaking out," pointing "in the direction the girls were running," and saying in Spanish, "Help, they stole my purse." Like Espinoza, she sprang into action. She called the police and immediately chased the fleeing youths on foot. She did not see any of the young women carrying a purse or discarding items. During the pursuit, she lost two of the youths, but followed the remaining youth to 94th and Hardy, where the police cornered and arrested the youth. She identified minor in a field show-up as the youth she chased by the clothes the youth was wearing, including "a yellow hoodie." She identified minor again in court. As she walked from the site of minor's arrest to the bus stop, she found Vargaz's purse and some of its contents in the path of where the youths had run.

Martina Becerra was with her daughter when she heard Vargaz cry for help. She called back "que paso," asking Vargaz what had happened, and Vargaz responded in Spanish that "they had taken her purse and that they had run." She testified she then saw a group of four people running. Like Espinoza and her daughter, she leapt to action and began to pursue the fleeing group by car. As the group paused at a stop sign, she took several photographs with her cell phone. While she was snapping these photos, she

noticed that one member of the group was a female wearing a yellow sweatshirt. She then saw the group speak briefly and split up.

The Inglewood police arrived on the scene within five to ten minutes after Alondra Becerra's 911 call. They apprehended and arrested the minor and several other youths. The police booked some items found on the youths into evidence, but to the best of the arresting officer's knowledge, none of Vargaz's property was found on any of the youths.

A petition was filed under section 602 of the Welfare and Institutions Code, alleging minor committed a robbery and alleging a special enhancement for a crime committed against a person over the age of 65. Minor denied the allegations. After an adjudication hearing with two co-minors, the court found the robbery and special allegation to be true, declared that minor remain a ward of the court, and ordered her placed in a juvenile camp. The court calculated minor's maximum confinement term, when combined with a pervious term from a different crime, as seven years. Minor appealed.

DISCUSSION

On appeal, minor argues the evidence was insufficient to support a finding that she aided and abetted a robbery against Vargaz.

We review a juvenile's confinement order under the substantial evidence standard, which requires us to review the sufficiency of the evidence. (*In re Roderick P.* (1972) 7 Cal.3d 801, 809.) In this review, we must view the evidence in the light most favorable to the prevailing party and presume every fact that could reasonably be deduced from the evidence in favor of the judgment. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206 (*Ochoa*).) "'[T]his inquiry does not require an appellate court to "ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt." [Citation omitted.] Instead, the relevant question is 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.' [Citation.]" (*People v. Johnson* (1980) 26 Cal.3d 557, 576 (*Johnson*).) "'It is blackletter law that any conflict or contradiction in the evidence, or any inconsistency in the testimony of witnesses must be

resolved by the trier of fact who is the sole judge of the credibility of the witnesses. It is well settled in California that one witness, if believed by the jury, is sufficient to sustain a verdict. To warrant the rejection by a reviewing court of statements given by a witness who has been believed by the trial court or the jury, there must exist either a physical impossibility that they are true, or it must be such as to shock the moral sense of the court; it must be inherently improbable and such inherent improbability must plainly appear.'" (*People v. Watts* (1999) 76 Cal.App.4th 1250, 1258–1259 (*Watts*).)

Aiding and abetting has four elements: "1. The perpetrator committed the crime; [¶] 2. The defendant knew that the perpetrator intended to commit the crime; [¶] 3. Before or during the commission of the crime, the defendant intended to aid and abet the perpetrator in committing the crime; [¶] and [¶] 4. The defendant's words or conduct did in fact aid and abet the perpetrator's commission of the crime."[1] (CALCRIM No. 401.) "Among the factors which may be considered in making the determination of aiding and abetting are: presence at the scene of the crime, companionship, and conduct before and after the offense. [Citations.] In addition, flight is one of the factors which is relevant in determining consciousness of guilt. [Citation.]" (*In re Lynette G.* (1976) 54 Cal.App.3d 1087, 1094–1095.) "Whether a person has aided and abetted in the commission of a crime is ordinarily a questions of fact. [Citations.] Consequently, '"all intendments are in favor of the judgment and a verdict will not be set aside unless the record clearly shows that upon no hypothesis whatsoever is there sufficient substantial evidence to support it."' [Citation.]" (*Id.* at p. 1094.)

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[1] Robbery, the crime the court found minor aided and abetted, has six elements: "1. The defendant took property that was not (his/her) own; [¶] 2. The property was in the possession of another person; [¶] 3. The property was taken from the other person or (his/her) immediate presence; [¶] 4. The property was taken against that person's will; [¶] 5. The defendant used force or fear to take the property or to prevent the person from resisting; [¶] and [¶] 6. When the defendant used force or fear to take the property, (he/she) intended (to deprive the owner of it permanently/ [or] to remove it from the owner's possession for so extended a period of time that the owner would be deprived of a major portion of the value or enjoyment of the property)." (CALCRIM No. 1600; see also Pen. Code, § 211.)

A. Sufficient evidence supports that minor aided and abetted a robbery

In re Lynette G. is instructive in determining whether sufficient evidence supports the court's finding that minor aided and abetted a robbery. In *In re Lynette G.*, the minor was in a group of girls, one of whom robbed a woman by forcibly taking the woman's purse from her body. (*In re Lynette G.*, *supra*, 54 Cal.App.3d at pp. 1090–1091.) The girls fled in a group from the scene. (*Id*. at p. 1091.) After the woman shouted for help, several men chased the girls and saw them discarding the woman's purse. (*Ibid*.) Law enforcement apprehended the girls, and the witnesses identified the girls in a field show-up. (*Id*. at p. 1092.) When the chasers returned the woman's purse to her, her wallet was missing. (*Id*. at p. 1091.) Upholding the court's finding under the substantial evidence test, the appellate court reasoned: "Testimony by witnesses at the trial disclosed that [the minor] was present at the scene of the crime and had fled with the perpetrator and two others after the crime had been committed and was still in their company shortly thereafter. Although flight, in and of itself, may be explained by a desire merely to disassociate oneself from an unexpected criminal activity, the trial court was not required to adopt that view; it could, reasonably, have concluded that had [the minor]'s flight been from fear of an unjustified charge of involvement, she also would have immediately disassociated herself from the other three girls." (*Id*. at p. 1095.)

Minor does not contest that she was at the bus stop when Vargaz's purse was ripped from Vargaz's body. Rather, she points to discrepancies in Vargaz's and Espinoza's on-scene and in-court testimonies regarding how many people grabbed at Vargaz or whether anyone saw minor, specifically, grabbing at Vargaz to cast doubt on her involvement. It was within the trial court's exclusive providence as the fact finder, however, to consider these discrepancies and weigh the witnesses' testimonies accordingly. (*Watts*, *supra*, 76 Cal.App.4th at pp. 1258–1259.) We may not and do not question those credibility determinations on appeal, and there is nothing "inherently improbable" or "shock[ing] [to] the moral sense" about the witnesses' testimonies such that we will otherwise disregard them. (*Id*. at p. 1259.) Even with discrepancies, the

testimony is consistent that that minor was standing in the group of people behind Vargaz when her purse was yanked from her.

In addition to minor being identified as part of the group around Vargaz, multiple witnesses saw a group of youths fleeing from the scene, and minor does not deny that she was one of the fleeing youths. Minor argues, however, that because she was arrested alone, the trial court erred in considering her flight indicative of her guilt. She cites to *In re Lynette G.* for the proposition that a minor leaving her companions' presence, thereby disassociating herself from them, "would indicate that the group was not acting in concert." Minor misreads *In re Lynette G.* The court in *In re Lynette G.* merely stated it would have been *reasonable* for the trial court to conclude that if the minor's flight was from "fear of an unjustified charge of involvement, she would have immediately disassociated herself from the other three girls"; it does not say that apparent or claimed disassociation necessarily proves a minor was not acting in concert with a group. (*In re Lynette G.*, *supra*, 54 Cal.App.3d at p. 1095.) Here, Martina Becerra testified she saw the youths speak before heading in different directions. Because we view the evidence in the light most favorable to the juvenile court's order, the group's apparent coordinated plan to break apart, which made the individual members more difficult to pursue, is not evidence of minor's desire to be disassociated from the crime because she was innocent. (*Ochoa*, *supra*, 6 Cal.4th at p. 1206.)

Minor's involvement in snatching Vargaz's purse was supported by substantial evidence: Minor was wearing a yellow sweatshirt; was identified by witnesses as being involved in the snatching by her yellow sweatshirt; stood in a group behind Vargaz; ran with the group after Vargaz's purse was snatched; was photographed carrying a purse while she was running with the group; spoke with the group before splitting apart; was arrested with no purse; and, lastly, Vargaz's emptied purse was found in the path where minor fled.

B. Sufficient evidence supports that the crime was robbery and not theft

Minor argues the evidence is insufficient to support that Vargaz's purse was taken by force from her and instead the evidence only supports a grand theft allegation. Minor

is correct that "[w]here the element of force or fear is absent, a taking from the person is only . . . grand theft regardless of the value of the property." (*People v. Morales* (1975) 49 Cal.App.3d 134, 139.) She is also correct that to prove a robbery "something more is required than just that quantum of force which is necessary to accomplish the mere seizing of the property." (*Ibid.*) For example, merely "'[g]rabbing or snatching property from the hand has often been held to be grand larceny, and not robbery.'" (*Ibid.*) However, whether force was used to obtain Vargaz's purse is a question of fact reserved, here, for the juvenile court. (*People v. Mungia* (1991) 234 Cal.App.3d 1703, 1709 (*Mungia*).) So long as the court's determination is supported by substantial evidence, we must uphold the court's determination. (*Johnson, supra*, 26 Cal.3d at p. 576.)

Vargaz testified that her arm was through her purse's straps and an assailant or assailants "forced it right behind me and I had to let it go." When asked if she tried to hold onto the purse as it was being grabbed, she said, "Yes, of course." She further testified that during the encounter, "I thought I was going to faint because I felt the strength, and I dropped to the floor." Vargaz's testimony that she tried holding onto her purse when it was "forced" from her and that this action caused her to feel faint and fall off the bus bench is sufficient to support the force element of robbery. In addition, a court may consider Vargaz's age, stature, and vulnerability compared to the assailant's or assailants' in determining what actions against Vargaz would constitute the requisite force establishing a robbery. (*Mungia, supra*, 234 Cal.App.3d at p. 1709.) The court may have permissibly weighed the facts that Vargaz was a 79-year-old woman sitting alone on a bench in favor of finding that hands grabbing to wrench her purse free from around her arm was sufficient force to constitute a robbery. Vargaz's other statements, such as "I thought it was a joke" and "I just let [the purse] go," although inconsistent, were apparently not given credence by the court over her testimony that force was used. It was for the trial court to assess the apparent discrepancies in Vargaz's testimony and weigh her testimony accordingly. (*Watts, supra*, 76 Cal.App.4th at pp. 1258–1259.) Again, we will not substitute our own judgment about Vargaz's testimony or dismiss it absent "inherent improbability." (*Ibid.*) Given Vargaz's statements about how her purse

was snatched from her body, substantial evidence supports the element of force required for robbery.

DISPOSITION

The order under review is affirmed.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.