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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DEDRIC RAYMONT WALLACE,

Defendant and Appellant.

B233479

(Los Angeles County
Super. Ct. No. TA114208)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gary E. Daigh, Judge. Modified, and as modified, affirmed.

Pamela J. Voich, 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, Assistant Attorney General, Stephanie A. Miyoshi and Daniel C. Chang, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant and appellant Dedric Rayment Wallace of one count of second-degree robbery under Penal Code section 211.¹ On appeal, he contends there is insufficient evidence to uphold the conviction. We disagree, although we modify the judgment to correct errors in the fees and fines imposed. We affirm the judgment as modified.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Robbery and Prosecution Evidence

On April 19, 2010, Sergio Martinez went to 102nd Street and Figueroa Street to deliver pizzas. With three pizzas, he rode his bike into a parking lot. Soon after Martinez arrived, four individuals stood, and one, identified as Darryl Wilson, closed the gate. Suspecting something was wrong, Martinez turned to leave but was prevented from doing so. Wilson stood between Martinez and the only exit. The other individuals then encircled Martinez.

Wilson, still standing in front of Martinez, gestured to Wallace and another person who were across the street. Wallace crossed the street and took Wilson's place blocking the gate. Wallace stood by the gate with his arms out to prevent Martinez from leaving. Martinez felt "[t]rapped with fear." He said, "Excuse me," to Wallace, who did not respond. Wilson and Wallace spoke, but Martinez didn't understand what they said. Wilson took the pizzas from Martinez, who then fell to the ground after being hit in the back of the head.² During this time, Wallace continued to block the gate.

After Martinez fell, the individuals, including Wallace and Wilson, scattered and ran. Martinez saw Wallace and Wilson run together across Figueroa and down 102nd Street. Martinez asked for help from police officers, who were then directed to a

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

² Wallace did not hit Martinez.

residence on 102nd Street into which witnesses saw the suspects run. Wallace was detained and Martinez identified Wallace at a field showup.

Thereafter, in January 2011, Martinez delivered a pizza to a residence and Wallace answered the door. Wallace asked if Martinez remembered him and told him, “ ‘Don’t do what you do.’ ”

B. Defendant’s Evidence

1. Gretrece Fields

On April 19, 2010, Fields and Wallace went to the strip mall where Martinez was robbed. In the strip mall, Fields went into the 99 Cents Store while Wallace went into the tobacco store. Fields was in the 99 Cents Store for about three minutes when she walked out and saw Wallace leaving the tobacco store. They left the parking lot together. Fields went down the street while Wallace walked across the street to go to his friend’s house.

After going to another store, Fields walked back to 103rd Street and Figueroa. On the walk back, Fields and her cousin passed by police officers speaking to “some guy” of Mexican ethnicity. Fields rejoined Wallace. Fields never saw anyone being attacked in the parking lot.

2. Wallace

Wallace said that he left his house with Fields and Fields’s cousin, walking down 102nd Street to the area which held the tobacco shop and the 99 Cents Store. The gate to the parking lot was closed, even though it was always open. The gate was opened for him by “some dudes” who were standing on the sidewalk. Wallace noticed Martinez, who appeared to be taking pictures with his cell phone.

Wallace went into the tobacco store for only a minute or two. When Wallace came out, he did not see Fields or her cousin. Wallace did notice that Martinez was inside the parking lot with the pizzas and a bike. After walking a little more than a block, Wallace turned around because he, “put it all together, like, they [were] trying to rob him. That’s why they got the gate closed.”

C. *Procedural History*

On May 10, 2011, a jury found Wallace guilty of second-degree robbery in violation of section 211 (count 1). On June 2, 2011, Wallace was sentenced to five years in prison.

DISCUSSION

A. *There Was Sufficient Evidence to Convict Wallace of Second-degree Robbery as an Accomplice.*

The main issue on appeal is whether there was sufficient evidence to convict Wallace of second-degree robbery. We conclude there is sufficient evidence.

“ ‘The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] ¶ ‘Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness’s credibility for that of the fact finder. [Citations.]’ ” (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) A reversal for insufficient evidence “ ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support” ’ the jury verdict.” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear. (§ 211; *People v. Nguyen* (2000) 24 Cal.4th 756, 759.) Martinez testified that Wilson and others physically attacked Martinez and that Wilson took the pizzas. Martinez’s testimony alone therefore was sufficient to establish that Wilson took the

property from his immediate presence by means of force or fear, thereby establishing the elements of robbery.

Wallace, however, argues that the evidence was insufficient to establish he aided and abetted Wilson and the robbery. “ ‘All persons concerned in the commission of a crime, . . . whether they directly commit the act constituting the offense, or aid and abet in its commission, . . . are principals in any crime so committed.’ [Citation.]” (*People v. McCoy* (2001) 25 Cal.4th 1111, 1116-1117.) An aider and abettor is one who (i) aids, promotes, encourages or instigates a crime, (ii) with knowledge of the unlawful purpose of the perpetrator, and (iii) the intent to assist in the commission of the crime. (*People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1158.)

Among the factors that may be taken into account when determining whether a defendant aided and abetted a crime are presence at the crime scene, companionship, and conduct before and after the offense. (*In re Juan G.* (2003) 112 Cal.App.4th 1, 5.)

“ ‘Mere presence at the scene of a crime,’ ” knowledge of the perpetrator’s criminal purpose, or the failure to prevent the crime do not amount to aiding and abetting, although, as noted, these factors may be taken into account in determining “a defendant’s criminal responsibility.” (*People v. Garcia* (2008) 168 Cal.App.4th 261, 272-273.)

“Whether a person has aided and abetted in the commission of a crime is a question of fact, and on appeal all conflicts in the evidence and attendant reasonable inferences are resolved in favor of the judgment.” (*In re Juan G.*, at p. 5, fn. omitted.)

Here, there is sufficient evidence to establish that Wallace aided and abetted the robbery. While the robbery was already in progress, Wallace, at Wilson’s behest, came across the street, spoke to Wilson, took Wilson’s place at the gate, and refused to let Martinez leave by ignoring his plea for help and by putting out his arms to block Martinez’s escape. Wallace and Wilson also fled in the same direction. Flight is one of the factors relevant in determining consciousness of guilt. (*In re Lynette G.* (1976) 54 Cal.App.3d 1087, 1095.)

Wallace's contention that there is insufficient evidence to show he was an aider and abettor rests primarily on his own testimony and the testimony of his alibi witness, Fields. However, it is the jury's responsibility to determine the facts and weigh the credibility of the witnesses. Testimony of a single witness, unless physically impossible or inherently improbable, is sufficient to establish a fact and support a conviction. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) Wallace asks us to reweigh the evidence and credibility of witnesses. We cannot do so and conclude that sufficient evidence exists to uphold Wallace's conviction of second-degree robbery as an aider and abettor.

B. The Trial Court Erred by Imposing a \$20 DNA Penalty Assessment and Failed to Include Victim Restitution in the Abstract of Judgment.

Wallace correctly contends that the DNA penalty under Government Code section 76104.6³ assessment was incorrectly imposed. An unauthorized sentence may be

³ Government Code section 76104.6 provides: "(a)(1) Except as otherwise provided in this section, for the purpose of implementing the DNA Fingerprint, Unsolved Crime and Innocence Protection Act (Proposition 69), as approved by the voters at the November 2, 2004, statewide general election, there shall be levied an additional penalty of one dollar (\$1) for every ten dollars (\$10), or part of ten dollars (\$10), in each county upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, including all offenses involving a violation of the Vehicle Code or a local ordinance adopted pursuant to the Vehicle Code.

"(2) The penalty imposed by this section shall be collected together with and in the same manner as the amounts established by Section 1464 of the Penal Code. The moneys shall be taken from fines and forfeitures deposited with the county treasurer prior to any division pursuant to Section 1463 of the Penal Code. The board of supervisors shall establish in the county treasury a DNA Identification Fund into which shall be deposited the moneys collected pursuant to this section. The moneys of the fund shall be allocated pursuant to subdivision (b).

"(3) The additional penalty does not apply to the following:

"(A) A restitution fine.

"(B) A penalty authorized by Section 1464 of the Penal Code or this chapter.

corrected at any time. (*People v. Scott* (1994) 9 Cal.4th 331, 354.) Under Government Code section 76104.6, DNA fines do not attach to restitution fines, certain vehicle and parking offenses, penalty assessments imposed under section 1464 or any other Government Code section, or state surcharges (Gov. Code, §§ 76104.6, subd. (a)(3) & 76104.7, subdivision (a)), nor do they attach to court security fees. (*People v. Valencia* (2008) 166 Cal.App.4th 1392, 1395-1396.) Here, the DNA penalty assessment was wrongly imposed and must be stricken from the judgment.

Respondent points out that the abstract of judgment does not reflect the trial court's imposition of \$15 in victim restitution under section 1202.4, subdivision (f). Appellate courts may correct clerical errors that do not reflect the oral judgments of sentencing courts. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) Accordingly the abstract of judgment must be corrected to include the \$15 victim restitution.

“(C) A parking offense subject to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.

“(D) The state surcharge authorized by Section 1465.7 of the Penal Code.”

DISPOSITION

We modify the judgment to strike the \$20 DNA penalty assessment and to impose a \$15 victim restitution fine under Penal Code section 1202.4, subdivision (f). The clerk of the superior court is directed to modify the abstract of judgment and to forward the modified abstract to the Department of Corrections. The judgment is otherwise affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.