Filed 8/27/18 In re M.R. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re M.R., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B286808 (Super. Ct. No. FJ54596) (Los Angeles County)
THE PEOPLE, Plaintiff and Respondent, v. M.R., Defendant and Appellant.	

M.R. appeals a judgment of the juvenile court sustaining a Welfare and Institutions Code section 602 petition finding M.R. committed robbery. (Pen. Code, § 211.)[1] We conclude, among other things, that substantial evidence supports the judgment. We affirm.

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

FACTS

At 5:15 a.m., on June 4, 2017, Carlos Chacon was "taking a break" from work. A car drove by. Two men got out and approached him. One held a knife, the other held a crowbar. Bandanas covered their faces.

Chacon testified M.R. held the crowbar. M.R. was the "heavier one" and was wearing "blue jean shorts." The "skinny guy" said, "Give me the . . . keys to your car." One of them said, "[D]on't run."

Chacon "jumped in the middle of the street" and said "[c]ome and get the keys." They did not take his keys. Instead, they went into his car and took "whatever was there." Chacon's wallet was in his car. They took it. Chacon "ran after them."

As the assailants drove away, Chacon followed them in his car and called 911. He obtained the license number of that vehicle and the police pursued it. The police apprehended the suspects. Chacon identified them in "a field showup."

Chacon testified that he was able to identify M.R. based on his clothing, height and weight. Defense counsel asked, "You were not frightened?" Chacon: "No, I was not. I was kind of mad because of what they were doing"; "I was not scared."

Chacon later testified M.R. was holding the crowbar "[l]ike it was a shotgun." Chacon thought "there was a chance [he] could be hurt." At the "beginning of the incident," he felt M.R. "could strike" him. He said at the moment he held out his keys his "adrenalin was pumping." He said he was "going to defend [himself] however it took."

Police Detective Christian Carrasco testified that in a "field showup" Chacon "positively identified" M.R. Before Chacon made this identification, he was given the admonishment that the

"person that we have detained might or might not be the person who actually committed the crime."

The People filed a juvenile court petition (Welf. & Inst. Code, § 602) alleging M.R. committed second degree robbery. (§ 211.)

The trial court sustained the petition. It found the People had established the elements of robbery. It said, "[O]bjectively the evidence supports the fear element of the crime."

DISCUSSION

Substantial Evidence

M.R. contends there is insufficient evidence to support the finding that he committed robbery. He claims there was no evidence that he was the man with the crowbar, and there was insufficient evidence of a taking by means of force or fear. We disagree.

In reviewing a claim of insufficiency of the evidence, "[w]e review the entire record in the light most favorable to the judgment . . . ." (*People v. Mohamed* (2012) 201 Cal.App.4th 515, 521.) "We neither reweigh the evidence nor reevaluate the credibility of witnesses." (*Ibid.*)

Section 211 defines robbery as "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." Fear as mentioned in section 211 includes "[t]he fear of an unlawful injury to the person or property of the person robbed . . . ." (§ 212, subd. 1.)

M.R. contends Chacon "admitted that he never saw his assailants' faces." He claims Chacon consequently could not make a valid identification of M.R. and the trial court's finding of robbery must be set aside. We disagree.

"'[I]t is not necessary that any of the witnesses called to identify the accused should have seen his face. [Citation.] Identification based on other peculiarities may be reasonably sure. Consequently, the identity of a defendant may be established by proof of any peculiarities of size, appearance, similarity of voice, features or clothing.'" (*People v. Mohamed*, *supra*, 201 Cal.App.4th at p. 522.) Identity may also be established by proof of the defendant's "proximity to the crime scene." (*Id.* at p. 523.)

Here Chacon saw M.R. at the time of the robbery. He followed the get-away car M.R. was in. He called 911 and gave police the license number of that vehicle. The police pursued the vehicle and apprehended the suspects. In a "field showup," Chacon identified M.R. He "positively" identified M.R. based on his clothing, height and weight. Chacon said he could identify him by the "blue shorts" he was wearing. He told police that M.R. was "the person holding the baton" at the time of the robbery.

M.R. contends his offense "was a [t]heft, [n]ot a [r]obbery" because "there was insufficient evidence of a taking by means of force or fear." (Boldface omitted.) He claims Chacon "denied being frightened," which eliminated the fear element of robbery. We disagree.

"'The element of fear for purposes of robbery is satisfied when there is sufficient fear to cause the victim to comply with the unlawful demand for his property.'" (*People v. Morehead* (2011) 191 Cal.App.4th 765, 774.) "It is not necessary that there be direct proof of fear; fear may be inferred from the circumstances in which the property is taken." (*Id.* at p. 775.) "If there is evidence from which fear may be inferred, the victim

need not explicitly testify that he or she was afraid." (*Ibid.*) "An unlawful demand can convey an implied threat of harm for failure to comply, thus supporting an inference of the requisite fear." (*Ibid.*) Moreover, the trier of fact "may infer fear '"from the circumstances despite even superficially contrary testimony of the victim."'" (*Ibid.*)

Here the trial court found that "[n]otwithstanding the fact that [Chacon] said . . . [he] 'was not scared,' . . . objectively the evidence supports the fear element of the crime." It noted that Chacon's behavior of "jumping away from the people who are approaching him" supported this finding. The court also referred to Chacon's other testimony. Chacon testified M.R. was holding a "crowbar" in a way that looked "like it was a shotgun." He said, "[M]y adrenalin was pumping. I was going to defend myself however it took"; "I didn't want anything stolen from me again." Chacon said he thought "there was a chance [he] could be hurt." He thought M.R. "could strike" him. When Chacon first saw the crowbar, he "thought [he] could be struck at that moment." The evidence is sufficient.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J. TANGEMAN, J.

Robert Leventer, Commissioner

Superior Court County of Los Angeles

Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Kenneth C. Byrne, Supervising Deputy Attorney General, Paul S. Thies, Deputy Attorney General, for Plaintiff and Respondent.