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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. SERGIO IVAN DEHARO, Defendant and Appellant.	B287473 (Los Angeles County Super. Ct. No. PA089514)

APPEAL from a judgment of the Superior Court of Los Angeles County, Hayden A. Zacky, Judge. Affirmed.

R.E. Scott, 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, Assistant Attorney General, Shawn McGahey and David W. Williams, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found Sergio Ivan Deharo (Deharo) guilty of second degree robbery (Pen. Code,[1] § 211.) On appeal, Deharo contends that there was insufficient evidence to prove that the robbery was accomplished through force or fear. We are unpersuaded by Deharo's arguments and, accordingly, affirm the judgment.

BACKGROUND

I. *The Robbery*[2]

On August 31, 2017, a Macy's employee alerted JS, an asset protection officer, to a male customer who was acting suspiciously in the men's section of the store.

JS went down one floor to the men's Nike department where he spotted Deharo, who matched the description given to him by the other employee. JS, who was not wearing a uniform, followed Deharo into the men's Sunglass Hut department, where he saw Deharo take a pair of Ray-Ban sunglasses from a display shelf. After Deharo took the sunglasses, he walked away from the display, went up an escalator, and then exited the store without paying for the sunglasses. JS, after confirming with a sales associate that Deharo took the sunglasses without paying for them, followed and observed Deharo as he moved through and then exited the store.

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

[2] The following is a summary of the People's evidence at trial.

JS exited the store before Deharo and watched him leave. After Deharo exited the store, JS approached him and identified himself as a Macy's asset protection officer and said, "I need to talk to you about the merchandise you failed to pay for."

When confronted by JS, Deharo claimed that the sunglasses belonged to him even though the glasses still had a store tag attached to them. When JS told Deharo that it was "not a big deal" and invited him to come back into the store, Deharo said, "I will fight you." In response, JS told Deharo that he didn't want to fight, reiterated that it was "not a big deal," and again invited Deharo to reenter the store. Again, Deharo refused to reenter the store, but this time he escalated his threat, telling JS, "I will stab you." When JS asked Deharo if he had a knife, Deharo reached for his right pants pocket and repeated that he would stab JS. JS interpreted Deharo's hand movement as indicating that Deharo did in fact possess a knife. Based on Deharo's words and gestures, JS "was afraid [Deharo] was going to hurt [him]." As a result, JS "disengaged" and "let him go." As Deharo walked away, JS took three pictures of Deharo. JS then contacted mall security, reported the incident to the police, and sent the photos he had taken of Deharo to a detective.

II. *The Trial*

In October 2017, the people filed a one-count information charging Deharo with second degree robbery. Deharo pleaded not guilty and the case proceeded to a jury trial in December 2017.

At trial, JS was the principal witness for the People and he testified as we have set forth above.[3] Deharo testified on his own behalf, admitting that he had stolen the sunglasses,[4] but denying that he threatened to fight and/or stab JS. Deharo claimed that it was JS who asked, "Do you want to fight?" Deharo further denied having a knife or telling JS that he had one at the time of their confrontation.

On December 13, 2017, after approximately one hour of deliberations, the jury found Deharo guilty as charged. On that same day, the trial court sentenced Deharo to five years in state prison. Deharo timely appealed.

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[3] A detective from the Los Angeles Police Department also testified for the People. The detective testified that JS identified Deharo in a photographic line-up. In addition, the detective testified that a tattoo which was visible on Deharo's right forearm in the photos taken by JS at the store matched a tattoo that was visible in a police photograph of Deharo; the tattoo was of the word "Deharo."

[4] On direct examination, Deharo also admitted that he had previously suffered convictions for bribery of an officer (§ 67.5), petty theft (§ 484), and vandalism (§ 594). Deharo admitted to those prior crimes, because before he testified, the trial court ruled that those convictions were probative of his credibility and could be used by the People for impeachment. In light of Deharo's preemptive admission, the People discussed only the bribery conviction on its cross-examination and did so only very briefly.

DISCUSSION

I. *Standard of Review*

" 'The test on appeal is whether substantial evidence supports the conclusion of the trier of fact, not whether the evidence proves guilt beyond a reasonable doubt.' " (*People v. Johnson* (1980) 26 Cal.3d 557, 576.) We "view the evidence in the light most favorable" to the verdict, and presume the existence of every fact the jury might reasonably deduce from it. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) We do not "substitute our evaluation of a witness's credibility for that of the fact finder." (*People v. Jones* (1990) 51 Cal.3d 294, 314.) "[T]he testimony of a single witness is sufficient to uphold a judgment even if it is contradicted by other evidence, inconsistent or false as to other portions." (*People v. Leigh* (1985) 168 Cal.App.3d 217, 221.) "The conviction shall stand 'unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction]." ' [Citation.]" (*People v. Cravens* (2012) 53 Cal.4th 500, 508.)

II. *Substantial Evidence Supports the Conviction*

A. *Fear as an element of robbery*

"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.) " 'The crime of robbery is a continuing offense that begins from the time of the original taking [and does not end] until the robber reaches a place of relative safety.' [Citation.] Hence, where the property is peacefully acquired, but force or fear is then used to facilitate the carrying away of the loot or the

making good of an escape before the thief has reached a place of temporary safety, the crime is transformed into robbery." (*People v. Williams* (2013) 57 Cal.4th 776, 790-791 (dis. opn. of Baxter, J.).)

"The element of force or fear is satisfied if the force *or* fear caused the victim to give up his or her property." (*People v. Smith* (1995) 33 Cal.App.4th 1586, 1595, italics added.) The force or fear element of robbery is stated in the disjunctive. "It is not necessary that the robbery be accomplished by means of both force and fear." (*People v. Winters* (1958) 163 Cal.App.2d 619, 623; see *People v. Centers* (1999) 73 Cal.App.4th 84, 99-100.) Use of fear or intimidation without force to induce the victim to part with property may constitute robbery. (*People v. Brew* (1991) 2 Cal.App.4th 99, 104; *Winters*, at p. 623.) "Force is not a necessary element of the offense of robbery because the offense may be committed by fear alone." (*People v. Tuggle* (1991) 232 Cal.App.3d 147, 155; see *People v. Reeves* (2001) 91 Cal.App.4th 14, 52; *People v. Brown* (1989) 212 Cal.App.3d 1409, 1418, disapproved on another ground in *People v. Hayes* (1990) 52 Cal.3d 577, 628, fn. 10.) Although the taking must be accomplished by force or fear, the defendant need not have intended the victim to experience force or fear—only to deprive the victim of the property permanently. (*People v. Anderson* (2011) 51 Cal.4th 989, 995-996.)

To establish the element of fear, the victim need not testify that he or she was afraid. (See *People v. Mungia* (1991) 234 Cal.App.3d 1703, 1709, fn. 2.) There need only be evidence from which it can be inferred that the victim felt fear and that the fear allowed the crime to be accomplished. (*Ibid.*) "[T]he fear necessary for robbery is subjective in nature, requiring proof 'that

the victim was in fact afraid, and that such fear allowed the crime to be accomplished.' [Citation.]" (*People v. Anderson* (2007) 152 Cal.App.4th 919, 946.) The element of fear need not arise from an express threat; intimidation of the victim is enough. (*People v. Morehead* (2011) 191 Cal.App.4th 765, 774-775.) Fear may be generated by words, actions, or the surrounding circumstances, and it may arise after the taking. (*People v. Flynn* (2000) 77 Cal.App.4th 766, 771-772.) And while the victim must actually become afraid, the fear need not be extreme: it need only be enough to cause the victim to comply with the demand for the property. (*People v. Cuevas* (2001) 89 Cal.App.4th 689, 698; *Morehead*, at pp. 774-775.) The fear element is satisfied when there is sufficient fear to cause the victim to comply with the unlawful demand for his or her property. (*People v. Davison* (1995) 32 Cal.App.4th 206, 212; *People v. Smith*, *supra*, 33 Cal.App.4th at p. 1595; *Morehead*, at p. 775.) "The force or fear element of robbery can be satisfied during either the caption or the asportation phase of the taking." (*People v. Gomez* (2008) 43 Cal.4th 249, 261.)

B. *Deharo accomplished his theft through fear*

Deharo argues that there was "no allegation" that he "applied any 'direct' force" to JS and "no allegation that [he] actually had a knife or directly threatened [JS] with one." Deharo's argument misses the mark.

Under the law, as discussed above, Deharo did not need to apply force to JS, possess a knife or directly threaten JS with a knife. Instead, through words and/or actions, Deharo needed only to cause enough fear in JS so that JS felt obliged to let Deharo "carry[] away the loot." (*People v. Williams*, *supra*, 57

Cal.4th at p. 791.) Here, Deharo did exactly that—when peacefully challenged by JS, Deharo reacted by making both threats ("I will fight you"; "I will stab you") and threatening gestures (responding to JS's question about a knife, Deharo moved his hand toward his pocket and repeated his threat to stab JS). Under such circumstances, JS justifiably felt "afraid" and reasonably "disengaged" from the confrontation, allowing Deharo to carry off the stolen sunglasses.

Since the verdict was supported by substantial evidence, we affirm the judgment.

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.