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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

CHASE LEE COLLINS et al.,

Defendants and Appellants.

B271441

(Los Angeles County
Super. Ct. No. MA066649)

APPEALS from judgments of the Superior Court of
Los Angeles County, Kathleen Blanchard, Judge. Affirmed.

Mary Jo Strnad, under appointment by the Court of
Appeal, for Defendant and Appellant Chase Lee Collins.

Benjamin Owens, under appointment by the Court of
Appeal, for Defendant and Appellant Robert Gerald Zygo.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
Assistant Attorney General, Lance E. Winters, Senior Assistant
Attorney General, Scott A. Taryle and Colleen M. Tiedemann,
Deputy Attorneys General, for Plaintiff and Respondent.

Chase Lee Collins and Robert Gerald Zygo were convicted following a jury trial of robbery and assault by means of force likely to produce great bodily injury. On appeal they argue the trial court committed prejudicial error when it excluded the preliminary hearing testimony of the victim, Lionel Ricard, which had been offered for impeachment purposes. Collins also argues the evidence is insufficient to support his conviction for robbery. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Assault and Robbery

a. Ricard's testimony

According to Ricard's version of events, Ricard and Jesse Holcombe went together to a neighborhood bar located in a shopping center in Lancaster on the night of July 18, 2015. Inside the bar Ricard saw Collins and Zygo, two men with whom he had been friends when he lived in Lancaster. Ricard, Collins and Zygo agreed to go outside to smoke marijuana. Ricard told Holcombe about the plan, and Holcombe said he would meet Ricard outside.

Ricard, Collins and Zygo left the bar and walked across the parking lot to the darkened corner of an adjoining building. Ricard leaned against a metal railing and rolled a marijuana cigarette. When he had finished, Collins told him, "You're gonna pay for what you did to SDV Kid." "SDV" was an acronym for "Small Dick Virgins," a social group involved in extreme sports and partying to which Collins and Zygo had belonged. "SDV Kid" apparently was the moniker of someone in the group, but Ricard claimed he did not understand what Collins meant.

Collins punched Ricard in the face, knocking his glasses off. Zygo placed Ricard in a chokehold from behind. Both Collins and

Zygo punched and kicked Ricard. At some point Ricard fell to the ground. Zygo picked up a rock and used it to hit Ricard in the head multiple times. Ricard described the rock as a “nice size boulder,” “borderline the size of a kids’ small basketball.” While Zygo hit Ricard with the rock, Collins continued to kick him.

At this point Zygo pulled a semiautomatic handgun from his waistband, chambered a bullet and handed the gun to Collins. Collins held the gun, pointed down, while Zygo searched Ricard. Ricard had \$1,200 to \$1,300 in cash, a wallet, cell phone and keys in his pockets. Zygo took these items from Ricard, and he and Collins ran back in the direction of the bar.

Holcombe arrived and helped Ricard up. Ricard found his wallet, cell phone and keys on the ground. Ricard’s head and face were bleeding; one tooth was loose; his shoulder and back were bruised; and he was dizzy. Ricard walked back to the bar and cleaned up in the restroom. He did not contact the police or ask that they be called; he intended to just “let it go.”

When Ricard’s mother saw his injuries the following morning, she insisted he call the police. Ricard falsely told the emergency operator he had not called earlier because his phone was stolen. He did not say anything about a gun or being punched in the face. Ricard then went to the emergency room. While he was being treated, a sheriff’s deputy photographed his injuries.

b. *Holcombe’s testimony*

Holcombe’s description of the evening’s events differed somewhat from Ricard’s. Ricard told him he was going outside to smoke marijuana but did not indicate where he was going to be. Holcombe went to his car, believing Ricard was going to join him there. While waiting, Holcombe smoked some marijuana.

As Holcombe was returning to the bar, he saw Ricard, who was “rambling” and “seemed a little out of it.” Holcombe did not notice any injuries to Ricard’s face. Holcombe went inside to pay his tab, but the bouncer would not let Ricard in. (The bar employee testified he kept Ricard out because he had a bloody nose.) Ricard kept trying to look inside the bar through a window. Collins and Zygo ran out through the back door.

2. Matthew Diggs’s Involvement

Matthew Diggs, a member of SDV, was a friend of Collins’s and an acquaintance of Zygo’s. Diggs did not know anyone in SDV with the moniker “Kid.”

Diggs testified he knew Ricard through Collins and Zygo. Ricard had broken into Diggs’s car and stolen a purse and smart phone that belonged to Diggs’s ex-girlfriend. Diggs believed Ricard had been told by “Rick G.” that Diggs had marijuana in his car. Diggs told Zygo about the break-in.

In July 2015 Zygo gave Diggs a \$100 bill while they were at the bar. Diggs could not recall Zygo saying why he gave him the money. Because his birthday was a short time away, Diggs considered the money a birthday gift.

3. The Investigation

Los Angeles County Deputy Sheriff Daniel Ament was assigned to investigate the incident. He testified he inspected the scene of the attack two days after it had occurred and saw no large rocks or rocks with blood on them. However, there were large chunks of asphalt and concrete nearby.

Deputy Ament interviewed Ricard on July 20, 2015. Ricard told Ament that Collins had said, “This is for what you and Rick G. did” before hitting him, not “This is for SDV Kid.” Although Ricard said the attack occurred by a beauty college at

the edge of the parking lot, on a photograph he identified a building housing a restaurant as the location.

Deputy Ament interviewed Holcombe on July 31, 2015. Holcombe gave conflicting versions of the evening's events. Holcombe explained, when he and Ricard arrived at the bar, Ricard introduced him to two men. Ricard left the bar with the men. Holcombe sat in his car for a few minutes and then went to find Ricard. Holcombe first said Ricard was getting up from the ground when he saw him, and his wallet, keys and cell phone were on the ground by his feet. He then said that he never saw Ricard's possessions on the ground. Holcombe told Ament Ricard looked like he had been in a fight; he had blood on his face and was dazed. Holcombe also told Ament that he did not want to be involved.

Deputy Ament spoke to Holcombe again on January 11, 2016. Holcombe denied knowing Collins and said Ricard had left his wallet, cell phone and keys in Holcombe's car before they went into the bar. Holcombe expressed fear for his safety if he testified.

Deputy Ament also reviewed surveillance video from the bar. The recording showed Ricard and Holcombe entering the bar together. Ricard shook hands with Collins and Zygo. At 12:16 a.m. Ricard, Holcombe and Zygo were standing by the bar. About 12:53 a.m. Collins and Zygo left the bar and entered the parking lot. They walked back toward the bar about a minute later, and Collins gestured at the window. Ricard and Holcombe then left the bar, and the four men walked to the parking lot and out of camera view. Collins and Zygo returned from the parking lot and walked back into the bar at 12:57 a.m.

The video recording showed Ricard walk back to the bar at about 1:00 a.m. and speak to the bouncer. A man identified as Nick, who had been in front of the bar, went inside and around to the patio where Collins and Zygo had moved. Collins and Zygo then walked to the back door and ran outside.

4. *Zygo's Jailhouse Calls*

Following his arrest and while waiting for trial, Zygo made several telephone calls from jail that were recorded and played for the jury. On August 3, 2015, speaking to an unidentified man about Holcombe, Zygo said, "Somebody needs to get at him and let him know what's going to happen if that shit goes south." Zygo was concerned "that fool is going to roll."

On August 17, 2015 Zygo asked an unidentified woman to get Diggs's phone number so Zygo could have his "lawyer contact him and talk about whatever Rick G[.] and [Ricard] broke into his car and robbed him back in the day." Zygo admonished her to "[t]ell him to don't say anything about recent things like . . . my birthday gift to him, anything like that he doesn't have to say anything about that, just keep his mouth shut about all that. He'll know what you are talking about."

In another conversation with an unidentified woman on October 2, 2015, Zygo expressed anger at Diggs. Zygo told the woman he could have Diggs incarcerated with him "[f]or the same . . . thing." The woman protested that Zygo would not do that. Zygo told her to tell Diggs what he told her, and that it would behoove Diggs to keep quiet.

5. *The Defense*

Zygo testified he and Collins had been friends since childhood. He had known Ricard since they were younger, had gone to high school with Diggs and was an acquaintance of

Holcombe's. Ricard was not a member of SDV, but had spent time with members of the group before he underwent a change in character and started stealing from his friends.

The defense theory of the case was that the large sum of cash Ricard claimed he was carrying the night of the incident was his mother's rent money. Ricard kept the money and fabricated the robbery to explain why it was missing.

According to Zygo, he, Collins and Collins's girlfriend went to the bar about 10:30 p.m. on July 18, 2015. They saw Ricard and Holcombe when they walked into the bar. Ricard asked Zygo and Collins if they wanted to go outside and smoke marijuana. Zygo said yes; they would meet him outside after they finished their drinks and Zygo got marijuana from his car. Zygo, Collins, Ricard and Holcombe left the bar and walked toward a restaurant, where Ricard sat down and rolled a cigarette.

Ricard mentioned he was planning on moving back to Lancaster. Zygo told him he had done a lot of wrong to people there and needed to make amends if he was moving back. Ricard had broken into people's houses and cars and stolen from them; Diggs was one of those people.

Ricard, responded, "[W]ell, you can feel however you want to feel . . . but fuck you fools, I'm pretty strapped." Believing Ricard was getting ready to come toward him and appeared to be reaching toward his waistband, Zygo reacted "because the term 'I'm strapped' usually means you have a weapon of some sort." Zygo punched Ricard in the mouth. Ricard fell back, then got up and swung at Zygo. Zygo hit him again, and Ricard tripped and fell.

Collins grabbed Zygo's arm and said they needed to leave. Zygo and Collins walked back to the bar. Holcombe, who had just

watched the scuffle, remained with Ricard. Inside, Zygo and Collins finished their drinks and went to use the restroom. When they came out, Zygo saw Ricard approaching the bar, looking angry. Ricard was refused entry to the bar and began looking in the windows. Zygo and Collins left through the back door to avoid a confrontation. Zygo denied having a gun with him that night.

Responding to the recorded jailhouse calls, Zygo explained he wanted to contact Holcombe to find out what he was going to say, not to influence his testimony. Zygo was afraid Holcombe might lie because of his friendship with Ricard. Zygo did not want Diggs to mention anything about the \$100 birthday gift about a week after the incident because he knew his gesture would be misconstrued. Zygo also said he was upset with Diggs for not wanting to testify and tell the truth and wanted Diggs to contact his attorney.

Collins did not testify in his defense.

6. Ricard's Preliminary Hearing Testimony and Its Exclusion at Trial

Ricard testified at the preliminary hearing about the assault and robbery. On cross-examination Ricard was asked about his participation in unrelated robberies that involved friends of Zygo's and Collins's. Following a sidebar conference the court appointed counsel for Ricard, who conferred with his new client and then advised the court Ricard was exercising his right not to testify. The court struck Ricard's preliminary hearing testimony.

At trial Collins's attorney attempted to cross-examine Ricard about differences between his preliminary hearing and trial testimony. The prosecutor objected, pointing out that the

preliminary hearing testimony had been struck. The court responded, “Well, if that’s the case, then, technically, the testimony doesn’t exist.” However, the court stated it would reconsider the issue if defense counsel’s research that evening identified authority indicating the court was wrong.

The following day the court reiterated its holding that Ricard’s preliminary hearing testimony could not be used to impeach him. “The preliminary hearing testimony doesn’t exist. We went over this yesterday. I invited you to find some case law. That’s why we came back earlier this morning, to handle any 402’s. I assumed if you found any case law to the contrary, you would have shown it to me. If the preliminary hearing testimony doesn’t exist, you can’t ask him about it. It was stricken from the record.”

7. The Charges, Jury Verdicts and Sentencing

Zygo and Collins were charged in an amended information with robbery (Pen. Code, §§ 211, 212.5, subd. (c)),¹ assault with a deadly weapon (§ 245, subd. (a)(1)) and assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(4)). It was specially alleged both men had personally used a firearm in committing the robbery (§ 12022.53, subd. (b)) and Zygo had personally used a deadly or dangerous weapon (a rock) (§ 12022, subd. (b)(1)). It was also specially alleged that Zygo was released from custody on bail when the offenses were committed and that Collins had two prior serious felony convictions within the meaning of section 667, subdivision (a), and the three strikes law

¹ Statutory references are to the Penal Code unless otherwise stated.

(§§ 667, subds. (b)-(i); 1170.12) and had served two separate prison terms for felonies (§ 667.5, subd. (b)).

The jury convicted both Zygo and Collins of robbery and assault by means of force likely to produce great bodily injury and found true the special allegation that Zygo had personally used a deadly or dangerous weapon in committing the robbery. The men were found not guilty of assault with a deadly weapon, and the jury found not true the firearm enhancement allegations.

Following the jury verdicts Zygo admitted he was on bail when the offenses were committed, and Collins admitted he had suffered two prior serious felony convictions. Zygo was sentenced to an eight-year state prison term. Collins was sentenced to an aggregate state prison term of 35 years to life.

DISCUSSION

1. *The Erroneous Exclusion of Ricard's Inconsistent Statements at the Preliminary Hearing Was Harmless*

Collins and Zygo contend, and the People agree, the trial court erred in precluding them from using Ricard's inconsistent statements during his preliminary hearing testimony for impeachment purposes. (See *People v. Corella* (2004) 122 Cal.App.4th 461, 470, 471 ["Mrs. Corella's words were stricken as testimony but continued to constitute her 'statement.' . . . [¶] . . . Striking Mrs. Corella's testimony does not mean the words were not spoken. They were. Corella had the right to present the words to the jury for its consideration of the truth of Mrs. Corella's earlier words."].) They disagree whether that error was prejudicial.

a. *Ricard's inconsistent statements*

The dispute about the admissibility of Ricard's preliminary hearing testimony first surfaced when Collins's counsel asked

Ricard on cross-examination about his statement at the preliminary hearing that he had “blacked out for a minute” after Zygo hit him in the head multiple times with a rock. At trial Ricard described the rock as “a nice size boulder.” When asked if he “blacked out,” he said he did “to a degree,” meaning, “It took me more than a minute or two to get up. I was dazed and dizzy.”

Other inconsistencies also existed between Ricard’s preliminary hearing and trial testimony. At the preliminary hearing Ricard testified, when Collins confronted him, Collins said, “You fucked up.” At trial Ricard testified Collins said, “You’re gonna pay for what you did to SDV Kid.” At the preliminary hearing Ricard testified, after confronting him, Collins “basically stood up and punched me a few times.” At trial he testified Collins was standing up before assaulting him.

There were also discrepancies in Ricard’s testimony about the handling of the handgun. Ricard testified at the preliminary hearing that, after Zygo gave his gun to Collins, Collins “put it in the waistband. It was never pointed at me.” He testified at trial that the gun “remained pointed towards the ground” by Collins.

Finally, Ricard testified at the preliminary hearing that “the attack stopped because someone else intervened,” someone he went to the bar with. At trial, however, he testified that Holcombe arrived at the scene after Collins and Zygo left, as Ricard was getting up from the ground.

b. *Zygo and Collins Were Not Prejudiced by Exclusion of the Additional Impeachment Evidence*

A conviction may not be reversed based on the erroneous exclusion of evidence unless the error resulted in a miscarriage of justice. (Evid. Code, § 354; see *People v. Ghebretensae* (2013) 222 Cal.App.4th 741, 750 [erroneous exclusion of impeachment

evidence is evaluated under the standard set forth in *People v. Watson* (1956) 46 Cal.2d 818, 836[.] “Under this standard, if a trial court erroneously excludes evidence, a defendant must show on appeal that it is reasonably probable he or she would have received a more favorable result had that evidence been admitted.” (*Ghebretensae*, at p. 750; see *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1125 [affirming conviction; “it is not reasonably probable that a more favorable result would have occurred had the evidence been admitted”].) Exclusion of impeachment evidence is harmless when other evidence has been admitted that undermines the witness’s credibility, so that the excluded evidence “would not have painted a materially different picture of the witness’s credibility.” (*Ghebretensae*, at p. 752; see *People v. Farley* (2009) 46 Cal.4th 1053, 1105.)

Here, the prior inconsistent statements erroneously excluded related to relatively minor details of the events at issue. In addition, Ricard was impeached by his prior inconsistent statements to police, as well as discrepancies in his trial testimony. For example, Ricard told Deputy Ament that Collins had said, “This is for what you and Rick G. did,” not, “This is for SDV Kid.” Thus, even without the prior inconsistent statement from the preliminary hearing, this aspect of Ricard’s testimony was impeached. Further, Ricard identified the location of the incident on a photograph as outside a restaurant adjoining the parking lot, even though he had told Ament and testified it had occurred near a beauty college. Ament went to both locations and found no rocks matching the description Ricard had given and no blood.

Ricard’s credibility was also challenged by his admission he had lied to law enforcement in this and other cases, his prior

felony convictions and the fact he was testifying under a grant of immunity with respect to charges then pending against him.² Further, his testimony was contradicted in various aspects by the trial testimony of his friend, Holcombe.

In view of the ample evidence admitted at trial that undermined Ricard's trustworthiness, Zygo and Collins have failed to demonstrate the excluded evidence would have painted a materially different picture of his credibility as a witness (*People v. Farley, supra*, 46 Cal.4th at p. 1105; *People v. Ghebretensae, supra*, 222 Cal.App.4th at p. 752) or that its exclusion clothed him in a "false aura of veracity" (*People v. Carpenter* (1999) 21 Cal.4th 1016, 1056; see *People v. Spence* (2012) 212 Cal.App.4th 478, 496). The exclusion of the impeachment evidence was harmless error.

2. Substantial Evidence Supports Collins's Conviction for Robbery

To evaluate Collins's challenge to the sufficiency of the evidence to support his conviction for robbery, "we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] We presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact's findings,

² In his opening brief on appeal Collins acknowledges "[t]he defense raised instances where Ricard lied in this case" and cites several examples.

reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] A reviewing court neither reweighs evidence nor reevaluates a witness's credibility.” (*People v. Covarrubias* (2016) 1 Cal.5th 838, 890; accord, *People v. Manibusan* (2013) 58 Cal.4th 40, 87.) Reversal for insufficient evidence is warranted only when it appears that under no hypothesis whatsoever is there sufficient evidence to support the jury's verdict. (*People v. Zamudio* (2008) 43 Cal.4th 327, 357; *People v. Miranda* (2016) 2 Cal.App.5th 829, 833-834.)

The robbery charge against Collins was based on his role as an aider and abettor. Aider-and-abettor liability exists when a person who does not directly commit a crime assists the direct perpetrator by aid or encouragement, with knowledge of the perpetrator's criminal intent and with the intent to help him or her carry out the offense. (*People v. Miranda* (2011) 192 Cal.App.4th 398, 407.) Aiding and abetting may be inferred from the defendant's presence at the scene of the crime, companionship with the perpetrator and conduct before and after the offense, including flight. (See *In re Juan G.* (2003) 112 Cal.App.4th 1, 5; *People v. Haynes* (1998) 61 Cal.App.4th 1282, 1294.) No one factor is dispositive; a combination of these circumstances, however, may satisfy the substantial evidence test. (*Miranda*, at p. 407; *In re Lynette G.* (1976) 54 Cal.App.3d 1087, 1094-1095.)³

³ The trial court instructed the jury using CALJIC No. 3.01 rather than CALCRIM No. 401, the instruction approved for use by the Judicial Council, that “[a] person aids and abets the commission or attempted commission of a crime when he or she [¶] (1) With knowledge of the unlawful purpose of the

The jury rejected the defense theory that no robbery had taken place. Even so, Collins argues, according to Ricard it was Zygo who searched him and removed his money and other personal items; Collins simply stood by while the robbery took place. Collins is correct that his friendship with Zygo, his presence at the scene and his knowledge of, but failure to prevent, the robbery do not equate to aiding and abetting the offense. (See *People v. Lara* (2017) 9 Cal.App.5th 296, 322.) But there was more.

Viewed in the light most favorable to the judgment, the evidence established that Ricard joined Collins and Zygo to smoke marijuana outside the bar. After telling Ricard he was going to pay for something he had done in the past, Collins hit Ricard; Zygo then joined in the attack. The assault ended, and Zygo pulled a gun from his waistband. He handed the gun to Collins, who held it—pointing downwards—while Zygo went

perpetrator, and [¶] (2) With the intent or purpose of committing or encouraging or facilitating the commission of the crime, and [¶] By act or advice, aids, promotes, encourages or instigates the commission of the crime. [¶] . . . [¶] Mere presence at the scene of a crime which does not itself assist the commission of the crime does not amount to aiding and abetting. [¶] To be guilty as an aider or abettor, the defendant's intent or purpose of committing or encouraging or facilitating the commission of the crime by the perpetrator must be formed before or during the commission of the crime. [¶] Mere knowledge that a crime is being committed and the failure to prevent it does not amount to aiding and abetting." Collins does not argue the court's instruction was in any way incomplete or incorrect.

through Ricard's pockets removing items, including cash.⁴ Taking the cash, Collins and Zygo both ran back to the bar. When Ricard returned to the bar looking for them, the two men fled out the back.

From this evidence the jury could have reasonably concluded Collins played an affirmative, supportive role in the robbery and was not simply an innocent or passive bystander. Together, his companionship with Zygo, his instigation of the joint assault on Ricard, his possession of the firearm while the robbery took place, and his flight with Zygo from the scene of the

⁴ The jury's not true finding on the firearm enhancement allegations does not preclude our consideration of Richard's testimony that Collins held the gun during the robbery in considering the sufficiency of the evidence to support his conviction as an aider and abettor. (See *People v. Lewis* (2001) 25 Cal.4th 610, 656 ["[s]ufficiency-of-the-evidence review involves assessment by the courts of whether the evidence adduced at trial could support any rational determination of guilty beyond a reasonable doubt. [Citations.] This review should be independent of the jury's determination that evidence on another count was insufficient."]; *People v. Santamaria* (1994) 8 Cal.4th 903, 911 ["if an acquittal of one count is factually irreconcilable with a conviction on another, or if a not true finding of an enhancement allegation is inconsistent with a conviction of the substantive offense, effect is given to both. [Citations.] When a jury renders inconsistent verdicts, 'it is unclear whose ox has been gored.' [Citation.] The jury may have been convinced of guilt but arrived at an inconsistent acquittal or not true finding 'through mistake, compromise, or lenity.' [Citation.] Because the defendant is given the benefit of the acquittal, 'it is neither irrational nor illogical to require her to accept the burden of conviction on the counts on which the jury convicted.'"].)

crime constitute substantial evidence Collins aided and abetted the robbery.

DISPOSITION

The judgments are affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.