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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.

MARVIN ONEAL CARROLL,

Defendant and Appellant.

B287787

Los Angeles County
Super. Ct. No. BA431742

APPEAL from a judgment of the Superior Court of Los Angeles County, Sam Ohta, Judge. Affirmed in part, sentence vacated, and remanded for resentencing.

Jared G. Coleman, 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, Steven D. Matthews and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Marvin Oneal Carroll was convicted of aiding and abetting kidnapping to commit robbery of and robbery of two women. He was sentenced to 29 years to life. Defendant contends there is insufficient evidence to support his convictions. He also asks us to vacate his sentence and remand with directions for the court to exercise its sentencing discretion under Penal Code¹ section 667, subdivision (a), and section 1385, subdivision (b), as amended by Senate Bill No. 1393.

We conclude defendant is entitled to the benefit of the change in the law and therefore remand the case with directions for the trial court to exercise its sentencing discretion. In all other respects, we affirm the judgment.

PROCEDURAL BACKGROUND

By information filed on September 23, 2015, defendant was charged with two counts of kidnapping to commit robbery (§ 209, subd. (b)(1); counts 2–3) and two counts of robbery (§ 211; counts 4–5).² The information alleged firearm (§ 12022.53, subds. (b), (e)(1)) and gang (§ 186.22, subd. (b)(1)(C)) enhancements for all counts. The information also alleged that defendant had been convicted of kidnapping (§ 207), bank robbery (§ 212.5), and assault with a firearm (§ 245, subd. (a)(2)) in 1998—and that those crimes constituted strike priors (§ 667, subd. (d); 1170.12,

¹ All undesignated statutory references are to the Penal Code.

² Defendant was not named in count 1, which was subsequently dismissed.

subd. (b)), serious felony priors (§ 667, subd. (a)(1)), and violent felony priors (§ 667.5, subd. (c)).

A jury convicted defendant of all counts and found the firearm and gang allegations to be true. Defendant admitted the prior conviction allegations. The court granted defendant's motion to strike two of the three prior strikes under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, and sentenced defendant to an aggregate second-strike term of 29 years to life. For count 2, the court imposed a term of 14 years to life (§ 1170.12, subds. (a)–(d); § 667, subds. (b)–(i)), plus 10 years for the firearm enhancement (§ 12022.53, subd. (b)) and five years for the serious felony priors (§ 667, subd. (a)(1)). The court imposed the same sentence for count 3 to run concurrently with the sentence for count 2. The court imposed and stayed 20-year sentences for counts 4 and 5.³

FACTUAL BACKGROUND

1. Disturbing the Peace Complaint

On November 12, 2014, just before 11:00 p.m., Los Angeles Police Department Officer John Thompson and his partner responded to a disturbing the peace complaint at an apartment complex located at 2641 Manhattan Place. The apartment complex was a hangout for the Rollin' 20s Bloods and a place where you would commonly see Rollin' 20s graffiti.

When they arrived, the officers saw a green Ford Explorer in a parking structure under the apartment complex. Defendant,

³ Defendant received the high term of five years on counts 4 and 5, doubled for the strike prior, plus 10 years for the firearm enhancement.

Deleon Givens, Jumanee Buard, and Woodysha Pilcher were inside the Explorer. The individuals in the Explorer fit the description of the people identified in the radio call, and the officers detained them pending further investigation. The officers subsequently discovered Pilcher had an outstanding felony warrant. As she was placed under arrest, Pilcher asked Thompson to give her Explorer keys to defendant. Thompson handed defendant the keys, and he took them.

2. 7-Eleven Surveillance Footage

The crimes at issue here began several hours later, in the early morning hours of November 13, 2014, in a 7-Eleven parking lot located less than a minute's drive from the apartment complex.

The People introduced video surveillance footage of the store's exterior. The footage showed the store entryway and an adjacent parking lot with parking spaces facing the storefront. The footage also captured the parking lot's exit onto the street. One video showed the comings and goings of patrons in and around the 7-Eleven parking lot and front entrance. The video showed the green Explorer parking near the front entrance of the 7-Eleven.

The video also showed defendant, Givens, and a person wearing a red jacket, around and about the Explorer. Defendant, the only person from the Explorer who went inside the store, bought a pack of cigarettes.

3. Kidnapping and Robbery

At around 3:30 a.m. on November 13, 2014—four and a half hours after the disturbing the peace complaint—Fatima Baires parked her white Toyota Camry one space away from the green

Explorer in the 7-Eleven parking lot. Baires and her friend Maryuri Melendez were shopping for food and candles to surprise their best friend for his birthday. The women got out of the Camry and went inside the store.

Less than a minute after the women went inside, Givens walked to the rear passenger side of the Camry. The person in the red jacket walked to the front of the Explorer, smoking a cigarette, and watched Givens and the parking lot. After watching the parking lot and 7-Eleven for close to 30 seconds, Givens opened the Camry's rear passenger door and got inside. The person in the red jacket got back inside the Explorer.

A minute after Givens got into the Camry, defendant got out of the Explorer through the driver's side door and walked into the 7-Eleven. Defendant then followed Baires and Melendez as they shopped. Baires testified, "He was always behind us." At the register, Melendez took out a large number of bills, and Baires warned her it was unwise "in an area like this." Baires turned around and looked at defendant because he had been looking "intensely" at them "the whole time." Baires "had this instinct that something was wrong."

Baires and Melendez left the 7-Eleven and got into the Camry. Defendant watched the women leave as he purchased a pack of cigarettes. He seemed to be in a hurry to get back outside. Shortly after Baires and Melendez closed the store doors, defendant left the 7-Eleven and got into the driver's seat of the Explorer. As Baires backed the Camry out of its parking space, defendant also backed the Explorer out of its space. Defendant then followed the Camry out of the parking lot.

The women drove away laughing about how they might shove a cake in their best friend's face, but when they turned the

corner they realized “there was a dark man in the back with a gun.” The man, whom Melendez later identified as Givens, pointed a black gun at Baires’s right ear at the side of her forehead. He “told [Baires] to drive wherever he was going to indicate and told her not to scream because, otherwise, he was going to kill her.”

Givens directed Baires to stop in an alleyway where he demanded the women “take everything out.” Baires screamed and told Givens not to rape her. Another person appeared and yelled “to get our wallets.” Givens began to search Baires. Givens touched her breasts to see if she had any money. He took her wallet containing \$200 and her cellphone. Givens asked the women, “ ‘Do you like a black guy?’ ” He also asked Baires if she wanted to “have relations with him.” Givens pointed the gun at Melendez’s left temple. Baires told Melendez, “ ‘Do not talk. He’s going to kill you.’ ” Givens took Melendez’s wallet, money, and phone.

The second person moved around outside the car and “[Baires] could tell that he was looking through [her car] trunk.” The person took a suitcase filled with cosmetology supplies from the trunk. The person yelled to Givens, “ ‘Where’s the cell phone? The other cell phone’s not here.’ ” Givens responded, “ ‘Maybe it’s in one of their purses.’ ” Melendez had hidden a second phone. Givens never found the hidden phone.

Givens wanted to take Baires’s car, but she “pleaded with him, crying, for him not to take the car and to not take away her ID.” Givens grabbed the “keys to the car, threw them away, and they took off running.” The keys ended up on the street.

Givens and his accomplice ran back to the street where a car was waiting. The women could not see the car but heard its

engine running. The car quickly drove away. After retrieving the car keys, the women drove back to the 7-Eleven and called 911.

4. Investigation and Arrest

Officers Thompson and Mike Santiago reviewed the 7-Eleven video surveillance. Both recognized defendant and Givens from prior contacts. Thompson also recognized the Explorer; it resembled the car he released to defendant four and a half hours earlier. Around 3:40 p.m. on November 13, 2014, Santiago arrested defendant on an unrelated warrant at the apartment complex.

5. Gang Evidence

As of November 2014, defendant and Givens were both members of the Rollin' 20s. The gang's primary activities were murder, attempted murder, armed robbery, grand theft, burglary, home invasion, narcotic sales, and vandalism. Membership in the gang required "putting in work," which could be done by committing crimes with known gang members. The 7-Eleven and the apartment complex were in the Rollin' 20s territory.

DISCUSSION

1. Substantial evidence supports defendant's convictions.

Defendant contends the evidence is insufficient to support his convictions for aiding and abetting the kidnappings and robberies perpetrated by Givens. Specifically, defendant argues there was no substantial evidence he had knowledge that Givens intended to kidnap and rob Baires and Melendez, or that defendant facilitated and aided Givens in the commission of those crimes. At most, defendant argues, the "evidence leads to only a

strong suspicion that [defendant] knew what was going on because he was a companion of the perpetrator.” We disagree.

In assessing the sufficiency of the evidence, we review the entire record to determine whether *any* rational trier of fact could have found the defendant guilty beyond a reasonable doubt. (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) “The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*Ibid.*)

In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably deduce from the evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) We may not reweigh the evidence or resolve evidentiary conflicts. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) The same standard applies where the conviction rests primarily on circumstantial evidence. (*People v. Thompson* (2010) 49 Cal.4th 79, 113.) In short, we may not reverse a conviction for insufficient evidence unless it appears “ ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [it].’ ” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

A person aids and abets the commission of a crime when he or she, acting with (1) knowledge of the unlawful purpose of the perpetrator, and (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages or instigates, the commission of the crime. (*People v. Marshall* (1997) 15 Cal.4th 1, 40.) Aiding and abetting may be shown by circumstantial evidence. (*People v. Beeman* (1984) 35 Cal.3d 547, 558–559.)

Among the circumstances which may properly be considered in determining if a defendant acted as an aider and abettor are a defendant's presence at the scene of the crime, his or her association with the principal, and his or her conduct before and after the offense. (*People v. Nguyen* (2015) 61 Cal.4th 1015, 1054.)

Reviewing the evidence here in the light most favorable to the judgment, we conclude there was sufficient evidence to support defendant's convictions. First, it is undisputed that defendant was present when the crimes began. Defendant arrived with Givens at the 7-Eleven in the Explorer and then followed the Camry in the Explorer after it drove away with Givens in the back seat.

Second, defendant had an association with Givens—they were both members of the Rollin' 20s gang. And the police saw them in the Explorer at the apartment complex parking structure a few hours before the crimes were committed. From there, they drove to the 7-Eleven, where they loitered for a while in the parking lot.

Third, defendant's conduct after the women arrived at the 7-Eleven suggests a measure of coordination with Givens. Shortly after Baires and Melendez arrived and entered the 7-Eleven, Givens got in the back seat of Baires's Camry. Defendant then followed Baires and Melendez into the store and kept them under close observation. Defendant continued to follow the women as they left the store, got into the Camry, and left the parking lot. And defendant drove the Explorer in close pursuit of the Camry harboring Givens. Accordingly, defendant was in a position to communicate with Givens before the women left the store and got back into the Camry, and to assist Givens after the women drove

away from the 7-Eleven with Givens in the back seat of the Camry.

Defendant cites *People v. Stankewitz* (1990) 51 Cal.3d 72, and *People v. Markus* (1978) 82 Cal.App.3d 477, for the proposition that his presence at the scene and failure to interfere to prevent the crimes do not constitute aiding and abetting. But here defendant's role went well beyond simply being present at the scene or failing to prevent the crimes. As we explained, defendant shadowed the two victims inside the 7-Eleven and then followed their car after they left the store.

On this record, the jury could reasonably infer that defendant aided and abetted Givens in committing the crimes.

2. Remand is required for resentencing.

Senate Bill No. 1393 (2017–2018 Reg. Sess.) (S.B. 1393), signed into law on September 30, 2018, and effective on January 1, 2019, amends sections 667 and 1385 to provide the trial court with discretion to strike five-year enhancements pursuant to section 667, subdivision (a)(1) in the interests of justice. The parties agree S.B. 1393 applies in this case, where the appeal was not final on the law's effective date. (*People v. Vieira* (2005) 35 Cal.4th 264, 305–306.)

As the People concede, defendant's sentence must be vacated and the matter remanded to afford the court an opportunity to exercise its new discretion under the amended statutes. (See *Peracchi v. Superior Court* (2003) 30 Cal.4th 1245, 1255 [at remand hearing, defendant has the right to the assistance of counsel and the right to be present].)

DISPOSITION

The sentence is vacated and the matter is remanded for resentencing under S.B. 1393. In all other respects, we affirm.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.