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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re C.H., a Person Coming Under the Juvenile Court Law.
THE PEOPLE, Plaintiff and Respondent, v. C.H., Defendant and Appellant.

2d Juv. No. B242682
(Super. Ct. No. J1262827)
(Santa Barbara County)

C.H. appeals a judgment of the juvenile court after it sustained a juvenile wardship petition (Welf. & Inst. Code, § 602) and found he had committed second degree robbery (Pen. Code, § 211). We conclude, among other things, that: 1) substantial evidence supports the finding that C.H. used force to maintain possession of an item he stole from a market, 2) the evidence is sufficient to support the actus reus and mens rea components of robbery, and 3) there is sufficient proof in the record to identify C.H. as the perpetrator. We affirm.

FACTS

Hilarino Solano was hired by a Santa Barbara market to protect the merchandise from theft.

On April 4, 2012, Solano saw a boy pick up a "Rockstar" drink and leave the store without paying. He followed him out of the market and asked him to pay for the item. The boy refused and said "fuck you" and "I don't have anything."

Solano tried to grab the boy's backpack "to take the Rockstar away from him." The boy hit Solano with a "forceful punch" to the face. The Rockstar fell to the ground.

Frances Wageneck, an assistant high school principal, testified that C.H. was the boy who struck Solano in the face. She recognized him because he was a student at her school.

C.H. did not testify at the hearing and he called no witnesses.

The trial court found true the allegations of the petition that alleged C.H. committed robbery. The court found that Wageneck "positively identified" C.H. "as the one" who hit Solano.

DISCUSSION

The Force Element of Robbery

C.H. contends there is insufficient evidence to support the finding that the force element of robbery was established.

In deciding the sufficiency of the evidence, we review the record in the light most favorable to the judgment. (*In re Sylvester C.* (2006) 137 Cal.App.4th 601, 605.) We do not weigh the evidence or decide the credibility of the witnesses.

"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. Pham* (1993) 15 Cal.App.4th 61, 65.) "[M]ere theft becomes robbery if the perpetrator, having gained possession of the property without use of force or fear, resorts to force or fear while carrying away the loot." (*Ibid.*)

C.H. contends he dropped the Rockstar drink before he used any force and claims therefore the force element for maintaining possession of the stolen property was not established. Solano however testified that *before* C.H. dropped the item, C.H. hit Solano with a "forceful punch" to the face. The trial court could reasonably find that testimony was sufficient to establish the force element. "The robber's escape with the loot is not necessary

to commit the crime." (*People v. Pham, supra*, 15 Cal.App.4th at p. 65.) Robbery is a continuing offense. It does not end until the robber reaches a place of safety. "It is sufficient to support the conviction that appellant used force to prevent the guard from retaking the property and to facilitate his escape." (*People v. Estes* (1983) 147 Cal.App.3d 23, 28.)

Actus Reus and Mens Rea

C.H. contends there was no evidence that he committed the required act with the requisite criminal intent.

"[E]very crime has two components: (1) an act or omission, sometimes called the actus reus; and (2) a necessary mental state, sometimes called the mens rea." (*People v. Williams* (2009) 176 Cal.App.4th 1521, 1528.) "Defendant's guilt of robbery . . . requires not only that he commit the requisite act but also that he have the requisite specific intent." (*Ibid.*)

C.H. contends that any force he used was solely to escape and not in furtherance of an attempt to maintain possession of the stolen item.

But Solano approached C.H. and asked him to pay for the stolen item. C.H. refused, insulted Solano and said, "I don't have anything" and "fuck you." He then punched Solano in the face before the item fell to the ground. From this evidence, the trial court could reasonably find sufficient actus reus and mens rea with the specific intent to maintain possession of the stolen item by use of force.

Evidence of Identity

C.H. contends there is insufficient evidence to support a finding that he was the person who took the item from the store and fought with Solano. We disagree.

C.H. notes Solano gave conflicting identity testimony. On direct, Solano identified C.H. But on cross-examination, he said he was "unsure" because the perpetrator had "a little bit of a beard." Solano testified, "I don't know if it's . . . this one now."

The People concede Solano gave this conflicting identity testimony. But they note there is other evidence to support the trial court's finding that C.H. was the perpetrator. ""[I]t is the exclusive province of the trial judge . . . to determine the credibility of a witness

and the truth or falsity of the facts upon which a determination depends."" (*People v. Allen* (1985) 165 Cal.App.3d 616, 623.) The trier of fact resolves conflicts in the evidence and decides which portion of a witness's testimony will be credited or rejected. (*Ibid.*)

"[U]ncertainties or discrepancies in witnesses' testimony raise only evidentiary issues that are for the [Trier of fact] to resolve." (*People v. Watts* (1999) 76 Cal.App.4th 1250, 1259.)

Solano testified that he saw a boy pick up the Rockstar drink and leave the store without paying. He followed the boy outside the store. The two of them were not more than 17 to 20 feet apart. Solano caught up with him and asked him to pay for the drink; the boy struck Solano. Solano testified the boy had possession of the Rockstar in his backpack before it fell to the ground.

The trial court could reasonably infer C.H.'s identity as the perpetrator also was established by another witness who also corroborated Solano's testimony. Wageneck knew C.H. because he was a student at her school. She witnessed the confrontation with Solano and saw C.H. hit Solano in the face. She corroborated Solano's testimony by testifying she saw a broken "monster drink" on the ground. The court could also draw reasonable inferences supporting C.H.'s identity as the perpetrator because he possessed the "Rockstar" shortly after the theft. (*People v. Mendoza* (2000) 24 Cal.4th 130, 176.)

Wageneck repeatedly asked C.H. to stay, but he left the area. The evidence is sufficient.

We have reviewed C.H.'s remaining contentions, and we conclude he has not shown error.

The judgment is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Thomas R. Adams, Judge
Superior Court County of Santa Barbara

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