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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

RONALD SIMPSON,

Defendant and Appellant.

2d Crim. No. B230823
(Super. Ct. No. BA369251-01
(Los Angeles County)

Ronald Simpson appeals a judgment following conviction of second degree robbery, with findings that he suffered a prior serious felony strike conviction and served six prior prison terms. (Pen. Code, §§ 211, 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667.5, subd. (b).)¹ We affirm.

FACTS AND PROCEDURAL HISTORY

Lou Issa was a parking valet at J & G Parking in Hollywood. On March 15, 2010, Simpson and Issa engaged in an altercation and Simpson lost his watch. The following day, Simpson returned to the parking lot and informed Issa's coworker that he wanted money from Issa for the watch and that he intended to fight him. Issa was not working there that day.

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

On March 17, 2010, Simpson returned to the parking lot and stated to Issa: "Come to the back lot. Come to the back lot. I'm about to [fuck] you up and take your money." Simpson then struck Issa in the face, splitting his lip. Simpson removed his shirt and took a fighting stance. When Issa responded, Simpson ran to the back parking lot.

Issa pursued Simpson, tackled him, and struck him two times. Simpson recovered and ran. Issa chased him and again tackled and struck him. As the two men then stood, Simpson grabbed the parking lot cash bag from Issa's pocket. Simpson "ripped [the pocket] all the way" to the knee to obtain the cash bag, which contained \$420 and customer tickets.

Simpson then fled on foot toward Sunset Boulevard. Issa shouted to his supervisor and coworkers that Simpson "got the money." The men pursued Simpson who responded by throwing a rock. Simpson also bent the parking lot gate arm "so it could swing back" at Issa and his coworkers. Simpson was running like "a guy with a jet on him."

Near Sunset Boulevard and Vine Street, Issa saw a patrolling police vehicle. He flagged down the police officers, pointed to Simpson who was half a block away, and stated that Simpson had robbed him. Issa then saw Simpson toss the cash bag "as sneaky as he could." Issa retrieved the cash bag and gave it to the police officers after they detained Simpson.

At trial, the prosecutor presented photographic evidence of Issa's lacerated lip and his torn pants. The arresting police officer testified and confirmed that the photograph reflected a "pretty big rip" in the pants and that the pocket was "totally ripped." The prosecutor also presented evidence of the parking lot surveillance videos that captured portions of the incident.

The jury convicted Simpson of second degree robbery. (§ 211.) In a separate proceeding, the trial court found that he suffered a prior serious felony strike conviction for robbery in 1986 and that he served six prior prison terms. (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667.5, subd. (b).) The court sentenced Simpson to 12

years imprisonment, consisting of a five-year term doubled to 10 years, and two years for two of the six prior prison terms served. The court imposed a \$200 restitution fine, a \$200 parole revocation restitution fine (stayed), a \$40 court security fee, a \$10 crime prevention fee, and a \$30 criminal conviction assessment. (§§ 1202.4, subd. (b), 1202.45, 1465.8, 1202.5; Gov. Code, § 70373.) It awarded Simpson 370 days of presentence custody credit.

Simpson appeals and contends that there is insufficient evidence that he took the cash bag by means of force or fear. (§ 211 [robbery is the "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"]; *People v. Bolden* (2002) 29 Cal.4th 515, 557.)

DISCUSSION

Simpson argues that he only committed grand theft because he took Issa's cash bag without application of force or fear. (*People v. Morales* (1975) 49 Cal.App.3d 134, 139 [taking constitutes grand theft if element of force or fear is absent].) He relies on Issa's testimony that the cash bag was "snatched" from his pants pocket. Simpson points out that robbery requires an application of force beyond that necessary to seize the property. (*Ibid.*) He adds that other than an initial blow, he did not strike Issa, and that Issa initially was unaware that the cash bag had been taken.

The taking requirement of robbery has two necessary elements – gaining possession of the victim's property and asporting or carrying it away. (*Miller v. Superior Court* (2004) 115 Cal.App.4th 216, 221.) The taking must also be accomplished by force or fear. (*Id.* at p. 222.) "Circumstances otherwise constituting a mere theft will establish a robbery where the perpetrator peacefully acquires the victim's property, but then uses force to retain or escape with it." (*Ibid.*) It is well settled law that the elements of force or fear may be supplied after the defendant has initially gained possession of the victim's property. (*Id.* at p. 224 [defendant physically resisted victim's efforts to regain wallet that was inadvertently left in beach restroom].)

The nature of the crime of robbery is such that a robber's escape is just as important to the execution of the crime as obtaining initial possession of the property. (*People v. Ramirez* (1995) 39 Cal.App.4th 1369, 1374.) It is longstanding law that the crime of robbery is not complete until the defendant has reached a place of temporary safety. (*Ibid.*) "The scene of the crime is not such a location, as least as long as the victim remains at hand." (*People v. Flynn* (2000) 77 Cal.App.4th 766, 772.)

There is sufficient evidence of force in the initial taking as well as in Simpson's attempts to escape with the cash bag. In obtaining the bag, Simpson ripped Issa's pants lengthwise from the pocket to the knee. (*People v. Garcia* (1996) 45 Cal.App.4th 1242, 1246, disapproved on other grounds by *People v. Mosby* (2004) 33 Cal.4th 353, 365, fns. 2 & 3 [force element satisfied by defendant's shoulder tapping victim's shoulder].) Issa described the torn pants and the jury received photographic evidence of them. (*People v. Mungia* (1991) 234 Cal.App.3d 1703, 1707 [existence of force or fear is a factual question for trier of fact].) Moreover, Simpson threw a rock at Issa and his coworkers and then bent and swung the parking gate at them in an attempt to prevent their retrieval of the money. This evidence satisfies the statutory requirements of robbery.

The judgment is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Leslie A. Swain, Judge
Superior Court County of Los Angeles

Jeffrey Lewis, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Marc A. Kohm, Kathy S. Pomerantz, Deputy Attorneys General, for Plaintiff and Respondent.