Filed 9/26/13 In re K.W. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re K.W., a Person Coming Under the Juvenile Court Law. THE PEOPLE, Plaintiff and Respondent, v. K.W., Defendant and Appellant.	B245913 (Los Angeles County Super. Ct. No. TJ20314)

APPEAL from an order of the Superior Court of Los Angeles County, Tamara Hall, Judge. Affirmed.

Elana Goldstein, 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, William N. Frank and Paul M. Roadarmel, Jr., Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Appellant K.W. appeals from the juvenile court's order of wardship after a finding she committed two counts of second degree robbery. K.W. contends the evidence is insufficient to support the finding she aided and abetted in the commission of robbery, that the taking of property underlying the second count of second degree robbery was not accomplished by means of force or fear, and that Penal Code section 654 precluded her being punished separately for the two counts of second degree robbery. We disagree with each of these contentions and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. The Evidence

Around 7:00 p.m. on October 18, 2012, Dejanae Silus was waiting for a bus and listening to music on her iPhone. When the bus arrived, she looked in her purse for her bus pass. Four or five girls approached her from behind. One of the girls, K.W., suddenly grabbed Silus's ponytail, pulled her head back, and punched her in the face, causing Silus to fall to the ground. Three other girls who had been right behind K.W. began punching Silus in the face; Silus attempted to fight back. Another girl on a black bicycle grabbed Silus's iPhone out of her hand. Soon thereafter, the girls stopped hitting her and ran off together. The beating had lasted about two or three minutes.

Silus got up and ran after the girls, telling them to give back her phone. As she approached them about a block away, the girls stopped running and turned around and "jumped" her again. K.W. punched Silus in the face repeatedly, and the others punched her as well. Silus fell to the ground and her purse strap came off her shoulder. The girl on the bicycle took Silus's purse and slammed the bicycle into Silus's stomach. The girl on the bicycle fled first and the other girls ran after her. Silus's jeans were torn and she was bloodied; she suffered injuries to her knees and a knot on her forehead. Silus said that between the two encounters K.W. had punched her "[o]ver a hundred" times.

A bystander called the police and about one minute later the police arrived and Silus told them what had occurred. The police drove her around the vicinity, looking for the attackers. Silus said she knew "exactly what [K.W.] had on and how her hair was and what outfit she was wearing." She said K.W. was African-American and heavy, with black and red hair in a side ponytail with curls. Silus described K.W. as wearing a long-sleeved pink jacket, pink sweat pants, and brown UGG boots. Within a couple of minutes, Silus saw K.W. walking down the street and pointed her out to the police. Silus said she was "[p]ositive" that K.W. was the person who had punched her and pulled her hair.

Silus described K.W.'s companions as African-American females, two of whom were about the same size as K.W., and two of whom were skinny. The girl on the bicycle was about the same size as K.W. and wearing black or blue shorts, a black t-shirt, and tennis shoes. She wore her hair in a ponytail. Another girl who punched Silus along with K.W. was "bigger" like K.W. and wearing dark blue UGG boots and her hair in a side ponytail. Another girl was tall and very skinny, dark-skinned, and wearing a red shirt that had rips in the back. The final girl was wearing regular jeans and a shirt.

K.W. introduced her booking photo into evidence, which depicted her wearing a dark jacket rather than a pink one. She was not wearing her hair in a side ponytail.

II. The Ruling

The court found Silus's testimony to be "very credible." The court further found the fact that K.W.'s clothing in the booking photo was not as Silus described did not undermine Silus's identification of K.W. The court concluded that both counts of second degree robbery had been proven beyond a reasonable doubt. The court sustained the petition and found K.W. to be a person described by section 602 of the Welfare and Institutions Code. The court declared K.W. to be a ward of the court, removed K.W. from parental custody, and ordered her to be placed in a camp community placement program for three months. The court set the maximum period of confinement at six years, and ordered predisposition credit of 56 days.

DISCUSSION

I. Sufficiency of the Evidence to Prove Specific Intent to Aid and Abet in Robbery

K.W. argues the evidence was insufficient to prove that she had the specific intent to aid and abet in the robbery of Silus's iPhone or purse. We disagree.

As the California Supreme Court has stated: "We analyzed aiding and abetting liability in detail in *People v. McCoy* (2001) 25 Cal.4th 1111. There, we explained that an aider and abettor's guilt 'is based on a combination of the direct perpetrator's acts and the aider and abettor's own acts and own mental state.' (*Id.* at p. 1117, italics omitted.) '"[O]nce it is proved that 'the principal has caused an *actus reus*, the liability of each of the secondary parties should be assessed according to his own *mens rea*.'"' (*Id.* at p. 1118, quoting Dressler, Understanding Criminal Law (2d ed. 1995) § 30.06[C], p. 450.) Thus, proof of aider and abettor liability requires proof in three distinct areas: (a) the direct perpetrator's actus reus—a crime committed by the direct perpetrator, (b) the aider and abettor's mens rea—knowledge of the direct perpetrator's unlawful intent and an intent to assist in achieving those unlawful ends, and (c) the aider and abettor's actus reus—conduct by the aider and abettor that in fact assists the achievement of the crime. (See *McCoy*, at p. 1117.)" (*People v. Perez* (2005) 35 Cal.4th 1219, 1225.)

K.W. argues there was no evidence to prove that she knew a theft was going to occur. Silus did not hear any discussion among the girls who attacked her, and the girls did not verbally demand that Silus give up her phone or purse. The girl on the bike took Silus's iPhone and purse. When K.W. was detained, she was walking on the street and was alone. K.W. argues the evidence merely proves that she assaulted Silus.

In *In re Lynette G.* (1976) 54 Cal.App.3d 1087 (*Lynette G.*), a minor argued on appeal that the evidence was insufficient to show she aided and abetted the commission of a robbery. "Whether a person has aided and abetted in the commission of a crime ordinarily is a question of fact. [Citations.] Consequently, '"all intendments are in favor of the judgment and a verdict will not be set aside unless the record clearly shows that

upon no hypothesis whatsoever is there sufficient substantial evidence to support it."' [Citation.]" (*Id*. at p. 1094.) Thus, the court was called upon to determine if the evidence was sufficient to show that Lynette G. directly or indirectly aided the perpetrator, with knowledge of the latter's wrongful purpose. (*Ibid.*) "Among the factors which may be considered in making the determination of aiding and abetting are: presence at the scene of the crime, companionship, and conduct before and after the offense. [Citations.] In addition, flight is one of the factors which is relevant in determining consciousness of guilt. [Citation.]" (*Id.* at pp. 1094-1095.)

The evidence in *Lynette G.* showed that a female minor approached a woman and hit her on the head twice with a heavy object, causing her to bleed heavily, then took her purse and shopping bag. (54 Cal.App.3d at pp. 1090-1091.) Lynette G. was present at the scene of the crime and fled with the perpetrator and two other girls after the crime was committed, and was apprehended while still in their company shortly thereafter. A bystander identified Lynette G. as having been one of the girls present at the crime scene. On appeal, the court held that the evidence was sufficient to support the trial court's conclusion that Lynette G. had aided and abetted the robbery. The appellate court concluded that while flight may be explained by a desire merely to disassociate oneself from an unexpected criminal activity, the trial court could reasonably conclude that Lynette G.'s flight was not motivated by fear of an unjustified charge of involvement where she did not immediately disassociate herself from the other three girls. (*Id.* at p. 1095; accord *In re Juan G.* (2003) 112 Cal.App.4th 1.)

In the case before us, the evidence that K.W. was guilty of aiding and abetting in the robberies was much stronger than in *Lynette G.* K.W. initiated the surprise attack on Silus by pulling her head back and punching her in the face repeatedly. Some of the other girls joined in. The court could reasonably infer that they did so in order to distract Silus and render her extremely vulnerable to removal of her cell phone from her hand, which had been visible just prior to the attack. As soon as the girl on the bike grabbed the cell phone, the attack stopped, indicating the shared purpose of the attack had been achieved. The evidence supported the conclusion that the attack was orchestrated, with

the girls having planned in advance that the girl on the bike would be the one to remove the property from the victim as she would be able to flee from the scene more quickly on the bike.

As K.W. correctly points out, to be guilty of robbery as an aider and abettor, she must have formed the intent to aid and abet the commission of the robbery before or while a perpetrator carried away the property to a place of temporary safety. (*People v. Cooper* (1991) 53 Cal.3d 1158, 1165-1166.) While the group's initial plan may have been to steal only the cell phone, when Silus followed the group they began assaulting her again. The girl on the bike took advantage of the opportunity to steal Silus's purse when the strap slipped from her shoulder as she fell to the ground. The group had not yet reached a place of temporary safety after stealing the cell phone. Thus, the second beating was inflicted to permit them to escape, maintain possession of the phone, and to dissuade Silus from chasing them again and retrieving her purse. In the process, K.W. and the other girls assisted the girl on the bike, who carried away Silus's phone and purse. After beating Silus into submission, the girls, including K.W., ran away together. At no time did K.W. attempt to disassociate herself from the group or stop the others. There was no evidence she was surprised by her companions' conduct or that she was afraid to interfere with their conduct. Their concerted action reasonably implies a common purpose. (See *People v. Campbell* (1994) 25 Cal.App.4th 402, 409.) We thus conclude that the evidence was sufficient to support the trial court's finding that K.W. aided and abetted in the robberies.

II. Stealing of the Purse Constituted Robbery

K.W. next argues that the taking of Silus's purse was not accomplished by force or fear, and thus did not constitute a robbery. She argues that the purse fell from Silus's shoulder and the girl on the bike merely picked it up. Silus was not injured by the act of the perpetrator taking the purse.

We are not persuaded. The taking of the purse occurred while Silus was repeatedly being punched in the face. Whether she suffered an injury is irrelevant. The

evidence clearly established that Silus lost control of the purse through the use of force. The robbery charge was properly sustained.

III. Section 654 Double Punishment

Finally, K.W. contends that count 2 should be stayed for purposes of sentencing pursuant to Penal Code section 654 since both the phone and the purse were taken from a single victim, during a single course of conduct, all with the same intent.[1] We disagree.

Section 654 "permit[s] punishment for only one of multiple offenses which are incident to a single objective as determined by the intent and objective of the actor. (See *People v. Latimer* (1993) 5 Cal.4th 1203, 1208.)" (*People v. Wiley* (1994) 25 Cal.App.4th 159, 163.)

We conclude substantial evidence supported the trial court's implied finding that the two robberies were not incident to a single objective as determined by the intent and objective of the actors. (*People v. Blake* (1998) 68 Cal.App.4th 509, 512 [trial court's implied finding that a defendant harbored a separate intent and objective for each offense will be upheld on appeal if supported by substantial evidence].) In the first offense, K.W.'s intent was to deprive Silus of her cell phone by assaulting her so her associate could remove the phone from Silus's hand. The group ran away as soon as that objective was accomplished, thus consummating the crime. The second offense had as its purpose depriving Silus of her purse. The second attack, while partially motivated by a desire to maintain possession of the cell phone, nonetheless spawned a separate objective of removing Silus's purse. Each of the two acts bore a separate and independent objective. Thus, we conclude that the trial court had before it substantial evidence from which it could reasonably determine that K.W. had a separate intent and objective in carrying out each of the two offenses, and thus punishment for each offense was warranted.

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[1] The trial court aggregated K.W.'s sentence to calculate her maximum sentence of six years, consisting of five years as the upper term for count 1, plus one-third of the midterm for count 2.

DISPOSITION

The order of wardship is affirmed.

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SUZUKAWA, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.