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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. JAMES LEODIS LAUDERMILL, Defendant and Appellant.	2d Crim. No. B233471 (Super. Ct. No. 2010004726) (Ventura County)

James Leodis Laudermill appeals a judgment following conviction of grand theft from the person of another, with findings that he suffered five prior serious felony strike convictions and served a prior prison term. (Pen. Code, §§ 487, subd. (c), 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667.5, subd. (b).)[1] We affirm.

FACTS AND PROCEDURAL HISTORY

Laudermill and Michael Cruikshank were homeless men living in Ventura. They saw each other frequently at a local park and were friendly.

On April 24, 2009, Cruikshank received an unemployment benefits check. He cashed it at a check-cashing business and obtained $200 cash and a money order for $100. Cruikshank quickly spent $200 as he was feeling "real generous" that day. When Cruikshank saw Laudermill, he suggested that they ride their bicycles to the check-

[1] All further statutory references are to the Penal Code.

cashing business, cash the money order, and purchase beer at a drug store. Laudermill agreed.

After purchasing the beer, Laudermill and Cruikshank rode to a bushy area near a freeway onramp. They chatted and drank the beer. Cruikshank placed his remaining cash in his jacket pocket.

When Cruikshank turned his head in response to a noise, Laudermill "pounced" on him, "leap[ing] like a panther on a deer." Cruikshank was knocked "face down in the dirt," as Laudermill placed his knee in Cruikshank's back. Cruikshank reached in his pocket and held his money "tight[ly]," "[b]ecause that [was] all the money [he] had and [he] didn't want to lose it." Laudermill repeatedly insisted that Cruikshank "[g]ive it up." Cruikshank finally released his hold on the money because he "didn't want to die." Laudermill then left, taking the two bicycles with him.

Cruikshank later realized that his wallet was missing. The wallet contained his social security card but no cash.

Cruikshank walked to a neighboring police station and reported the crime to Ventura Police Officer Matt Liston. Liston knew Cruikshank and believed him to be a "functioning alcoholic." Liston saw that Cruikshank's neck was red and he suspected that Cruikshank had been drinking alcohol. The two men walked to the bushy area where Cruikshank and Laudermill had sat. Liston saw that the gravel and dirt were disturbed as though a struggle had occurred.

That evening, Ventura Police Detective John Hixson found Laudermill walking along a bike path. When approached by Hixson, Laudermill gave a false name. Laudermill's wallet contained an identification in the name of "James Laudermill" as well as Cruikshank's social security card. Laudermill then stated: "[Y]ou got me. . . . I rolled a drunk." Following the arrival of Officer Liston, Laudermill stated: "I saw an opportunity and I took it. . . . [Y]ou got me; I rolled a bum earlier; he told on me."

Laudermill testified at trial and denied taking money from Cruikshank. He stated that he "tussle[d]" with and slapped Cruikshank in an argument over a woman and

then Cruikshank left the bushy area. Afterwards, Laudermill saw that Cruikshank left his wallet on the ground. He retrieved it, threw out Cruikshank's papers, and placed his identification inside the wallet. Laudermill stated that "[m]ost likely" he would not have returned Cruikshank's wallet.

Laudermill denied that he made incriminating statements to the investigating police officers, but admitted that he suffered theft-related convictions in 1986 and 1994.

Following a court trial, the trial judge acquitted Laudermill of second degree robbery, but found him guilty of grand theft from the person of another. (§ 487, subd. (c).) On January 21, 2011, the court sentenced Laudermill, a third-strike defendant, to a prison term of 25 years to life. The court clerk then informed the trial judge that Laudermill's prior serious felony strike convictions were neither admitted nor found true. The judge responded that he did not recall but that he thought the priors were found true. The court then continued the sentencing proceedings.

Later that day, the trial court reconvened to discuss Laudermill's prior strike convictions. Laudermill's attorney, Randolph Tucker, stated that he did not know "if formal admissions were taken," but that "Mr. Laudermill does not deny he has had those prior prison commitments." Tucker continued: "I don't know whether or not he admitted the strike priors and there would have been a right to a court trial on . . . those strike priors. They have never been in dispute and I am not going to stand up here now and pretend as if they were. I just don't know if the record was ever made at the time of the trial as to that point." The prosecutor responded that he did not remember whether Laudermill waived his constitutional rights and admitted the prior strike convictions. The court again continued the matter.

On April 29, 2011, Laudermill filed a motion asserting that he had already been placed in jeopardy regarding the prior strike convictions. The trial court denied the motion. On May 17, 2011, the court received evidence regarding Laudermill's prior strike convictions and found them to be true. It then denied Laudermill's motion to strike

his prior convictions pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. It sentenced Laudermill to 25 years to life, and imposed a $200 restitution fine, a $200 parole revocation restitution fine (stayed), and a $40 crime prevention fine. (§§ 1202.4, subd. (b), 1202.45, 1202.5.) The court also ordered restitution to the victim and awarded Laudermill 1,130 days of presentence custody credit.

Laudermill appeals and contends that: 1) there is insufficient evidence that he took Cruikshank's wallet from his person, and 2) the trial regarding his prior felony strike convictions violated his federal constitutional right against double jeopardy.

DISCUSSION

I.

Laudermill argues that the trial court's finding that he did not commit a robbery because he did not use force or fear to obtain Cruikshank's money or wallet, also means there is no evidence to convict him of theft from a person. In other words, he asserts that he did not form the intent to steal until after Cruikshank's property was lying on the ground. He adds that the conviction violates his federal and California constitutional rights to due process of law.

In reviewing the sufficiency of evidence to support a conviction, we examine the entire record and draw all reasonable inferences therefrom in favor of the judgment to determine whether there is reasonable and credible evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Solomon* (2010) 49 Cal.4th 792, 811.) Our review is the same in a prosecution primarily resting upon circumstantial evidence. (*Ibid.*) We do not redetermine the weight of the evidence or the credibility of witnesses. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129, overruled on other grounds by *People v. Rundle* (2008) 43 Cal.4th 76, 151.) If the factual findings are reasonably supported by the evidence and all reasonable inferences therefrom, the opinion of the reviewing court that the circumstances might support a contrary finding does not warrant reversal of the judgment. (*People v. Abilez* (2007) 41 Cal.4th 472, 504.)

Theft is divided into two degrees, petty theft and grand theft. (§ 486; *In re Jesus O.* (2007) 40 Cal.4th 859, 862.) Theft "from the person of another" is grand theft. (§ 487, subd. (c); *Jesus O.*, at p. 861.) Theft from the person of another historically has been treated as a more serious offense than common theft, in part because of the physical danger presented to the theft victim. (*Id.* at pp. 862-863.)

Sufficient evidence supports the judgment that Laudermill took Cruikshank's money from his person. The trial judge stated that he believed Cruikshank embellished the nature of the attack, that it did not involve a weapon, and that taking the money and wallet of Cruikshank, a man disabled by alcohol and homeless living, did not involve a knife and a "big attack." The trial judge may have had the simile, "as easy as taking candy from a baby" in mind. (*People v. Roberts* (1976) 57 Cal.App.3d 782, 787 [purse snatch without requisite degree of force is grand theft from the person but not robbery], disapproved on other grounds by *People v. Rollo* (1977) 20 Cal.3d 109, 120, fn. 4.) Moreover, Laudermill stated to police officers that he "rolled a bum earlier." Although the evidence might support a contrary finding, we do not substitute our views for those of the trier of fact. (*People v. Abilez*, *supra*, 41 Cal.4th 472, 504.)

II.

Laudermill contends that the trial of his prior felony strike convictions violated his constitutional right against double jeopardy. He also relies on *People v. Gutierrez* (1993) 14 Cal.App.4th 1425, 1439-1440, and asserts that the trial court's failure to find the prior strike convictions true at trial amounts to a finding that they are untrue. Laudermill concedes that we are bound by our Supreme Court's decision in *People v. Monge* (1997) 16 Cal.4th 826, 829, 845, but raises this issue to preserve it for further review. (*Ibid.* [state and federal double jeopardy protections do not apply to retrial of prior conviction allegations].)

At trial, Laudermill admitted suffering prior theft-related convictions in 1986 and 1994--the same prior strike convictions alleged by the prosecution (robbery and carjacking). Nearly seven months later, the trial court sentenced Laudermill to 25 years

to life imprisonment as a third strike defendant, but there had been no trial, admissions, or express findings that the prior strike convictions were true. The court and the parties then discussed their lack of recall whether Laudermill had admitted the prior strike convictions or whether a trial regarding their truth had occurred. Following several continuances, the court held a trial regarding the prior conviction allegations and found them true. It again sentenced Laudermill to 25 years to life imprisonment.

The trial of Laudermill's prior felony strike convictions did not violate principles of double jeopardy. By initially sentencing Laudermill as a third strike defendant, the trial court made an implied finding that the prior felony strike convictions were true. The court and counsel mistakenly believed that the prior convictions had been found true. The subsequent trial to correct that mistake did not violate double jeopardy principles. (*People v. Anderson* (2009) 47 Cal.4th 92, 102 ["It is well settled that if the jury's finding on a strike allegation is reversed on appeal for insufficient evidence, the allegation may be retried to a new jury"]; *People v. Barragan* (2004) 32 Cal.4th 236, 241 ["[I]n the noncapital sentencing context, retrial of a prior conviction allegation does not violate the double jeopardy clause of the federal Constitution"]; *People v. Monge*, *supra*, 16 Cal.4th 826, 829, 845.)

People v. Gutierrez, *supra*, 14 Cal.App.4th 1425, does not assist Laudermill. There, the defendants waived a jury trial regarding their prior conviction allegations, and stipulated that the trial court could determine the truth of the prior convictions at the probation hearing. At the probation hearing, no discussion of the prior convictions occurred. At sentencing, the trial court acquiesced in the court clerk's suggestion that the prior convictions be stayed. The reviewing court concluded that the appellate record did not reflect a finding as contemplated by section 1158. (*Id.* at pp. 1439-1440.) The reviewing court also declined to "equate the trial court's acquiescence in his clerk's suggestion . . . as an implied judicial finding that the priors had been proved." (*Id.* at p. 1440.) Unlike *Gutierrez*, here the trial court initially sentenced Laudermill as a third strike defendant, thus impliedly finding the prior strike convictions

true for purposes of section 1158. (*Ibid.* ["Whenever the fact of a previous conviction of another offense is charged in an accusatory pleading, and the defendant is found guilty of the offense with which he is charged, the jury, or the judge if a jury trial is waived, must unless the answer of the defendant admits such previous conviction, find whether or not he has suffered such previous conviction"].)

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

John E. Dobroth, Judge

Superior Court County of Ventura

David Andreasen, 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, Linda C. Johnson, Supervising Deputy Attorney General, Gary A. Lieberman, Deputy Attorney General, for Plaintiff and Respondent.