Filed 1/13/20 In re T.F. CA2/6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re T.F., a Person Coming Under the Juvenile Court Law.	2d Crim. No. B296575 (Super. Ct. No. NJ29237) (Los Angeles County)
THE PEOPLE, Plaintiff and Respondent, v. T.F., Defendant and Appellant.	

A juvenile court found true that T.F. committed three counts of attempted murder (Pen. Code,[1] §§ 187, subd. (a), 189, 664; counts 1-3); three counts of assault with a deadly weapon (§ 245, subd. (a)(1); counts 7-9); two counts of second degree robbery (§ 211; counts 4-5); and two counts of attempted second

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

degree robbery (§§ 211, 664; counts 6 & 12). The juvenile court also found true as to counts 1 through 9 that T.F. personally inflicted great bodily injury (§ 12022.7, subd. (a)) and that he personally used a deadly weapon (§ 12022, subd. (b)(1)). The juvenile court committed T.F. to the Department of Juvenile Justice for a maximum period of confinement of 30 years and eight months.

We reverse count 5 (robbery). In all other respects, we affirm.

FACTS

On the night of August 24, 2017, before midnight, T.F. approached Malcom Jackson and two of Jackson's friends from behind. He told them to empty their pockets and give him everything they had. Jackson refused. T.F. stabbed Jackson once in his side and ran in pursuit of one of Jackson's friends. Jackson had surgery to repair his intestine.

On August 25, 2017 at about 12:12 a.m., T.F. approached Jeffrey Norman with a knife. T.F. told Norman to give him his wallet. Norman yelled for help. T.F. stabbed Norman about 10 times in the face, stomach, and legs, and took his wallet. Norman was hospitalized for about five days. The doctor told Norman that T.F. had narrowly missed his heart.

At about 12:40 a.m. that same night, T.F. approached Eli Hadnett from behind. T.F. grabbed Hadnett's backpack and spun him around. T.F. held a knife and told Hadnett to give him everything he had. Hadnett grabbed the wrist that held the knife. With his other hand, Hadnett held onto his backpack. T.F. was trying to take the backpack. Hadnett let go of T.F.'s wrist and ran away with his backpack. T.F. ran after him. Hadnett only got across the street when T.F. caught him. While holding

on to Hadnett's backpack, T.F. stabbed him in the ribs, under his arm, and his head, neck, and back. The driver of a car yelled at Hadnett to get in. As Hadnett got into the car, T.F. was pulling on his backpack. The driver of the car took Hadnett to the hospital.

At about 1:00 a.m., the police arrested T.F. based on a description given by a victim. T.F. had a bloody knife in his pocket and credit cards belonging to Norman. The same day, Jackson, Hadnett, and Norman, as well as Jackson's friend and the driver of the car that rescued Hadnett, identified T.F. as the assailant.

When T.F. was arrested he did not appear to be under the influence of drugs or alcohol. His speech was not slurred and his ability to walk was normal. T.F. was 14 years old.

DEFENSE

T.F. testified on his own behalf. He said on the night in question he was with friends. He smoked seven grams or more of marijuana and drank a can of Red Bull. The Red Bull tasted bitter, like it contained Xanax. The next thing he remembered, he woke up in juvenile hall three days later. He had no memory of approaching anyone with a knife.

T.F. testified about his traumatic childhood. When he was seven, he saw his mother beaten and he himself was beaten with a belt. He had been in the immediate vicinity of a number of shootings. When he was homeless, he witnessed violence and someone tried to stab him with an ice pick. He has been a daily heavy user of drugs since the ninth grade.

A nurse who saw T.F. on the day he was admitted to juvenile hall did an intake assessment. She assessed him as high risk because he appeared to be under the influence of drugs.

A psychiatric social worker assessed T.F. when he was brought to juvenile hall. He reported T.F. appeared to be under the influence of drugs, and suggested further investigation for thought disturbance, somatic complaints, substance abuse, and traumatic experiences.

A psychologist evaluated T.F. He concluded T.F. was suffering from post-traumatic stress disorder, attention deficit hyperactivity disorder, bipolar disorder, and substance abuse.

A forensic toxicologist testified that the effects of marijuana on young users include disorientation of space and time, hallucinations, psychosis, lack of impulse control, and the inability to make good judgments. Xanax may enhance these effects.

DISCUSSION

I.

T.F. contends count 5, the alleged robbery of Hadnett, is not supported by evidence.

In reviewing the sufficiency of the evidence, we view the evidence in a light most favorable to the judgment. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) We discard evidence that does not support the judgment as having been rejected by the trier of fact for lack of sufficient verity. (*People v. Ryan* (1999) 76 Cal.App.4th 1304, 1316.) We have no power on appeal to reweigh the evidence or judge the credibility of witnesses. (*People v. Stewart* (2000) 77 Cal.App.4th 785, 790.) We must affirm if we determine that any rational trier of fact could find the elements of the crime beyond a reasonable doubt. (*Johnson*, at p. 578.)

"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.)

Robbery requires both a taking (caption) and a carrying away (asportation). (*People v. Alvarado* (1999) 76 Cal.App.4th 156, 161.) A taking occurs when the defendant secures dominion over the property. (*Ibid.*) A taking requires that the defendant dispossess the victim of his property and take it under his own control. (Levenson & Ricciardulli, Cal. Criminal Law (The Rutter Group 2018) § 6:90, p. 6-109; *People v. Quinn* (1947) 77 Cal.App.2d 734, 737.)

Here, T.F. was never able to dispossess Hadnett of his backpack and obtain dominion and control over it. T.F.'s unsuccessful struggle to wrest Hadnett's backpack from him does not amount to dominion and control under any reasonable definition of those terms.

In the cases on which the People rely, the defendant exercised control over the property, albeit not always physical possession.

Thus, in *People v. Martinez* (1969) 274 Cal.App.2d 170, 174, the defendant ordered the victim at gunpoint to put money in a paper sack, but did not take the sack. The court affirmed the robbery conviction. In ordering the victim to place the money in a paper sack, the defendant was exercising dominion and control over it.

In *People v. Green* (1979) 95 Cal.App.3d 991, 1000, the defendants forced the victim into her car and ordered her to drive. One of the defendants said he wanted the victim's purse, but the other defendant told him to wait. Eventually the defendants forced the victim from her car. The defendants drove on a short distance before abandoning the car with the purse still

in it. The court affirmed the defendants' robbery convictions. At least between the time the defendants forced the victim from the car and the defendants' abandonment of the car, they exercised dominion and control over the purse. Here, T.F. never exercised dominion and control over Hadnett's backpack.

We must reverse count 5.

II.

T.F. contends the trial court erred in admitting into evidence a statement he made after he invoked his right to remain silent.

When officers arrested T.F., they placed him in the back of a patrol car. An officer asked T.F. about his identity and address. After witnesses identified T.F., the officer read him his rights pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*). T.F. indicated he did not want to talk. The officer continued to ask him about who he is and where he lives. During that questioning, T.F. spontaneously stated, "The only reason I really did it [was that I was] hungry."

Under *Miranda*, when a suspect in custody invokes his right to remain silent, police questioning must cease, and any statement made during interrogation thereafter may not be used against him at trial. (*Miranda*, *supra*, 384 U.S. at p. 474; *People v. McCurdy* (2014) 59 Cal.4th 1063, 1086.) But *Miranda* does not apply to all conversation between the police and the suspect. The police may speak freely to the suspect provided that the speech would not reasonably be construed as calling for an incriminating response. (*McCurdy*, *supra*, 59 Cal.4th at. pp. 1086-1087.) This includes routine booking questions such as the suspect's name, address, height, weight, date of birth, and current age. (*Pennsylvania v. Muniz* (1990) 496 U.S. 582, 601-602.)

Welfare and Institutions Code section 627, subdivision (a) provides: "When an officer takes a minor before a probation officer at a juvenile hall or to any other place of confinement pursuant to this article, he shall take immediate steps to notify the minor's parent, guardian, or a responsible relative that such minor is in custody and the place where he is being held." Thus, an officer must inquire of the juvenile about his identity and address. Such questions cannot be reasonably construed as calling for an incriminating response. In fact, T.F.'s statement that he "did it" was spontaneous, and not in response to any of the questions asked by the officer. That the statement was spontaneous shows it was voluntary. The officer's questions did not violate *Miranda*.

In any event, if it was error to admit the statement, the error was harmless by any standard. Five witnesses identified T.F. as the assailant. T.F. had a bloody knife and credit cards belonging to Norman on his person. T.F.'s admission that he "did it" was simply superfluous.

T.F. argues his statement that he did it because he was hungry was prejudicial because it was evidence of his state of mind. But the manner in which T.F. committed the offenses shows he acted with purpose and deliberation. His actions show that he wanted his victims' property and that he intended to kill to get it. Given the deliberate manner in which T.F. committed the crimes, nothing about the defense evidence would be sufficient to convince a reasonable trier of fact that there is a reasonable doubt. We conclude beyond a reasonable doubt that T.F.'s statement did not affect the judgment. (*Chapman v. California* (1967) 386 U.S. 18, 24.)

III.

T.F. contends there is no substantial evidence that he had the state of mind required for attempted murder and robbery.

Attempted murder requires the specific intent to kill. (*People v. Smith* (2005) 37 Cal.4th 733, 739.) Here, T.F. stabbed Jackson in the abdomen with sufficient force that surgery was required to repair Jackson's intestine. Stabbing the victim in the abdomen, an extremely vulnerable area of the body, constitutes substantial evidence of an intent to kill. (*People v. Moore* (2002) 96 Cal.App.4th 1105, 1114.) That T.F. stabbed Norman and Hadnett multiple times also shows an intent to kill.

Robbery and attempted robbery require the specific intent to permanently deprive a person of property by means of force or fear. (*People v. Lindberg* (2008) 45 Cal.4th 1, 24.) Here, T.F. demanded property from his victims at knife point. He succeeded in obtaining property from Norman. That is sufficient evidence to support a finding of robbery and findings of attempted robbery.

T.F.'s contention appears to be based on the theory that his young age, mental problems, and drug use prevented him from forming the specific intent required for attempted murder, robbery, and attempted robbery. He presented such evidence in his defense. But the juvenile court as the trier of fact was not required to find such evidence credible. (See *People v. Ryan*, *supra*, 76 Cal.App.4th at p. 1316 [evidence unfavorable to judgment discarded as not having sufficient verity to be accepted by trier of fact].)

DISPOSITION

Count 5 (robbery) is reversed. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

John C. Lawson II, Judge

Superior Court County of Los Angeles

Laini Millar Melnick, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Assistant Attorney General, and Nancy Lii Ladner, Deputy Attorney General, for Plaintiff and Respondent.