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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DARNELL JOSEPH YATES,

Defendant and Appellant.

A131672

(Solano County
Super. Ct. No. VCR205648)

Defendant Darnell Yates was sentenced to four years in state prison following his conviction on two counts of second degree robbery. He asserts two arguments on appeal: (1) that there was insufficient evidence to support the robbery convictions; and (2) that he was entitled to 429 actual custody credits, rather than the 428 credits the court awarded. Defendant's insufficient evidence claim is without merit. As the People concede, however, defendant was entitled to one additional day of custody credit. We therefore order the abstract of judgment amended to reflect 429 custody credits, for a total of 493 credits. In all other regards, we affirm the judgment.

BACKGROUND

Factual Background

On November 24, 2009 at approximately 9:45 p.m., Tyara Ellis and Allyssa Austria were working at Meadows Video in Vallejo. Ellis was shelving videos when she

heard Austria scream. She turned around to see that five men had entered the store.¹ They were all wearing plain, black, hooded sweatshirts with the hoods covering their heads and white masks or T-shirts covering their faces except for their eyes. One of the men held something to Austria's back, pushing her to the ground and saying something like, "If you move, I'll shoot you" or "I'll kill you." While she was lying on her stomach, the suspect searched her pockets, taking her cell phone and wallet.

Meanwhile, the others surrounded Ellis and ordered her to open the cash register. After she opened the till, one of them told her to sit down on the ground, which she did. They took money from the register, including rolls of coins, and lottery tickets from a drawer behind the counter. Ellis was not certain, but she thought the coins were rolled in paper. They also searched the office and then took Ellis's cell phone before running out of the store.

After they left, both Austria and Ellis went outside and looked around to see where the suspects were headed. Ellis then called 911, reporting that they had been robbed and that the suspects got into a large, beige or tan vehicle. At trial, however, Ellis testified that she did not see anyone get into a car, nor did she see anyone running away on foot. After listening to a recording of her 911 call, she explained at trial that she thought the suspects drove off in a car because, although she did not see them get into a car, one quickly pulled out of the nearby liquor store parking lot. Austria testified that the suspects exited the store to the right and then took off running.

Vallejo Police Officer Sean Kenney was on routine patrol that evening when he heard a dispatch report concerning the robbery. He started driving towards the video store and, within a minute of having heard the report, saw three individuals walking west on Florida Street, approximately two blocks from the store. As he drove towards them to get a better look, one of the subjects turned around and noticed his car, and all three took off running. Officer Kenney gave chase in his car and saw one suspect turn north onto

¹ At trial, Ellis estimated there were four to six men, while Austria estimated there were three or four. A video from the store's surveillance camera confirmed that there were five suspects.

Sheldon Avenue while the other two ran into a yard on Sheldon Avenue toward Hilton Avenue. He lost sight of the suspects, so he put out a call to set up a perimeter and continued searching.

Vallejo Police Officer Ed Barrientos heard Officer Kenney's call for assistance and took up a position on the corner of Sheldon Avenue and Florida Street. He soon spotted defendant, who was wearing "some type of white cloth on his head, a black hooded sweatshirt and dark-colored pants," running from the east to the west side of Sheldon Avenue. Officer Barrientos identified himself as a police officer and ordered defendant to stop. Defendant ignored him, attempting instead to climb a fence. Failing that effort, defendant jumped back down and continued running. As Officer Barrientos followed on foot, he noticed that defendant had his hands near his waistband. Fearing that he might be grabbing at a weapon, the officer drew his gun and ordered defendant to the ground. Defendant finally complied and was ultimately detained in the front yard of 617 Sheldon Avenue. Officer Barrientos confirmed that he had maintained visual contact with defendant during the chase and never saw him drop any items.

At the time of his detention, defendant was wearing shoes that resembled those worn by one of the suspects in the store's surveillance tape. Likewise, his jeans had distinctive embroidery on the back pockets and his sweatshirt had a distinctive white mark, again similar to the suspect in the videotape.

Vallejo Police Officer Javier Munoz searched defendant's pockets after he was taken into custody and found paper bills, a roll of quarters, and a roll of nickels. Officer Munoz testified he recovered \$25 in paper bills, but later clarified that he did not count the bills—"I just grabbed the cash out of his pocket, and I handed it over to Officer Coburn." He explained that he was relying on a report prepared by another officer to come up with the \$25. Officer Munoz also found a stack of lottery tickets on the ground near where defendant was detained, on the path he had taken in his attempt to evade Officer Barrientos.

With defendant in the custody of another officer, Officer Barrientos returned to the perimeter post, where he heard other officers yelling instructions at a second suspect—

later identified as Darniko Yates, defendant's brother—who was hiding under a car at 609 Sheldon Avenue. After Darniko was pulled out from underneath the car, Officer Barrientos searched him, finding a roll of dimes in clear plastic, a cell phone, a phone charger, black gloves, and additional cash in his pockets. Like defendant, Darniko was wearing a white T-shirt underneath a dark hooded sweatshirt.²

After learning that two suspects had been detained, Vallejo Police Officer Jeff Coburn drove to Meadows Video, where he interviewed Ellis and Austria. Austria told him that when the suspects entered the store, one of them pointed a gun at her and ordered her to the ground. She described the gun as silver but could not specify whether it was a revolver or semi-automatic weapon.³ No gun was ever found. Ellis and Austria were unable to identify either defendant or Darniko at an in-field show-up.

The items recovered from defendant's pockets, as well as the lottery tickets found near where defendant was detained, were relayed to Officer Coburn at the video store.⁴ Kiran Sidher, the owner of Meadow Videos, had come to the store immediately upon receiving a call from Austria that the store had been robbed. Officer Coburn showed her a counterfeit fifty-dollar bill that had been found on defendant, and she identified it as a counterfeit bill that had been in a drawer behind the counter earlier that evening. She recognized because it had a blue note stapled to it on which she had written "Fake" a few days earlier. She also confirmed that the lottery tickets found near defendant had come from the store because the inventory numbers matched those missing from a drawer behind the counter.

² One of the officers acknowledged at trial that black sweatshirts, blue jeans, white T-shirts, and black tennis shoes were commonly worn by young men in Vallejo.

³ A private investigator for defendant who interviewed Austria eight months after the robbery testified that she told him she never actually saw a weapon. She did tell him that the suspects either mentioned having a gun or threatened her.

⁴ Officer Munoz testified at trial that he gave the items recovered from defendant to Officer Coburn, although Officer Coburn testified that he received items from Sergeant Florendo, who had in turn received them from Officer Munoz. The bills Officer Coburn received included a counterfeit fifty-dollar bill.

Sidher also confirmed that there likely would have been rolls of coins in the cash register till.⁵ As she described it, pennies were typically rolled in clear wrappers, while nickels, dimes, and quarters were typically wrapped in paper, although on occasion they might be in clear plastic.

Procedural Background

By information filed December 22, 2009, defendant was charged with two counts of second degree robbery. The information alleged a firearm enhancement as to each count.

A jury trial commenced on January 31, 2011. Testimony was heard that afternoon and the following morning, and the case was then submitted to the jury. After brief deliberations on the afternoon of February 1 and one more hour on the morning of February 2, the jury returned a verdict a guilty on both counts, rejecting the firearm enhancement.

On April 1, 2011, defendant was sentenced to four years in state prison. He was awarded 428 credits for time served, plus 64 conduct credits, for a total of 492 credits.

This timely appeal followed.

ANALYSIS

Substantial Evidence Supports Defendant's Conviction

In his first argument, defendant contends that the “circumstantial evidence presented by the state was insufficient to prove beyond a reasonable doubt that [he] participated in the robbery, and his conviction violated the due process clauses of the United States and California Constitutions.” We review this claim of insufficient evidence under the substantial evidence test. (*In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1136; *People v. Mosley* (2007) 155 Cal.App.4th 313, 322; *People v. Gaut* (2002) 95 Cal.App.4th 1425, 1430; *People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1339.) Substantial evidence is “evidence that is reasonable, credible, and of solid value—such

⁵ Two fingerprints were lifted from the cash register till, but neither print matched defendant.

that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11, citing *People v. Johnson* (1980) 26 Cal.3d 557, 578; see also *People v. Lenart* (2004) 32 Cal.4th 1107, 1125; *People v. Bolin* (1998) 18 Cal.4th 297, 331; *People v. Parra* (1999) 70 Cal.App.4th 222, 225.) Under this standard, the court does not “ “ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.” [Citation.] Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ [Citation.]” (*People v. Hatch* (2000) 22 Cal.4th 260, 272, quoting *Jackson v. Virginia* (1979) 443 U.S. 307, 318-319; see also *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) Under this deferential standard, we reject defendant’s contention that his conviction for second degree robbery was unsupported by substantial evidence.

As set forth in Penal Code section 211, “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.” A store employee may be a robbery victim even though he or she does not own the property taken and is not in charge or in immediate control of the property at the time of the crime. (*People v. Estes* (1983) 147 Cal.App.3d 23, 26; see also *People v. Jones* (2000) 82 Cal.App.4th 485, 490 [“California follows the long-standing rule that the employees of a business constructively possess the business owner’s property during a robbery.”]) In this case, the prosecution presented abundant evidence from which a rational trier of fact could find beyond a reasonable doubt that defendant took property from Ellis and Austria against their will by means of force or fear.

Defendant was first spotted by Officer Kenney shortly after the robbery and just a few blocks away from Meadows Video. When defendant realized a police car was approaching, he and two other suspects took off running. The jury could have inferred a consciousness of guilt from the evidence of defendant’s flight. (*People v. Mendoza* (2000) 24 Cal.4th 130, 180 [“a jury [may] infer, if it so chooses, that the flight of a

defendant immediately after the commission of a crime indicates a consciousness of guilt”].)

When defendant was detained, he wearing clothing that matched that worn by all five robbery suspects, namely a black hooded sweatshirt, white shirt, and dark jeans. But not only did defendant’s clothes match the general description, the surveillance video from the store showed that the shoes defendant was wearing matched those of one of the suspects. And that same suspect could be seen in the videotape wearing jeans that bore distinctive stitching on the pockets and a black sweatshirt with a white mark on it. At the time of his arrest, defendant was wearing jeans with stitching on the pockets and a black sweatshirt with a white mark on it.

The prosecution also introduced evidence showing that defendant was in possession of items that had been taken during the robbery. Perhaps most incriminating was the counterfeit fifty-dollar bill that Sidher recognized as one that had been in the store earlier in the day, a bill she definitely identified by the blue note bearing her handwriting that was stapled to it. Defendant also had rolls of coins in his pockets. While individuals do not commonly walk around carrying rolls of coins, the store typically kept such rolls on hand. Finally, lottery tickets stolen during the robbery were found just feet away from where defendant was arrested, on the path he had taken when attempting to evade Officer Barrientos.

The evidence also established that defendant’s brother was arrested within the vicinity of where defendant was arrested—again, just blocks from the video store. He was also wearing clothing resembling that worn by all five suspects, and he, too, had rolls of coins in his pockets.

In light of the foregoing evidence, we conclude that a rational trier of fact could find beyond a reasonable doubt that defendant was one of the perpetrators of the Meadows Video store robbery. Defendant’s convictions were thus supported by substantial evidence.

In asserting his insufficient evidence claim, defendant attempts to discredit the evidence presented by the prosecution. He challenges the chain of custody of the

counterfeit fifty-dollar bill, claiming that the prosecution failed to establish that it was actually recovered from defendant. This was so, he posits, because Officer Munoz testified that he only recovered \$25 in paper bills from defendant and did not recall seeing the counterfeit fifty. Further, Officer Munoz testified that he gave it to Officer Coburn, while Officer Coburn testified that he received it from Officer Florendo, who in turn received it from Officer Munoz.

Defendant also points to the testimony of both Sidher and Ellis that nickels, dimes, and quarters were generally wrapped in paper, while the rolls of coins found on defendant were wrapped in plastic. He cites Officer Barrientos's testimony that he maintained visual contact with defendant during the chase and never saw him drop the lottery tickets. He cites Officer Coburn's testimony that young men in Vallejo commonly wear black hooded sweatshirts, white T-shirts, and dark jeans. He notes that two fingerprints were lifted from the cash register but neither belonged to defendant. Finally, he relies on Ellis's 911 report that the suspects fled in a beige car, opining that because "the perpetrators had sped away in a getaway car, they could not have been found walking a few blocks from the video store."

Defendant's arguments ignore the well-established standard we apply on this appeal: we must view the evidence in the light most favorable to the prosecution. (*People v. Hatch, supra*, 22 Cal.4th at p. 272; see also *People v. Ochoa, supra*, 6 Cal.4th at p. 1206.) And the evidence of defendant's proximity to the video store just after the robbery, his flight from Officer Barrientos, the clothing he was wearing, the items found in his pockets, the stolen lottery tickets found on the ground near where he was detained, and his brother's proximity to the robbery in clothing similar to that worn by the suspects all supported the jury's verdict. Reversal is therefore unwarranted. (*People v. Bolin, supra*, 18 Cal.4th at p. 331 [reversal for insufficient evidence "is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support the conviction' "].)

Defendant Is Entitled To One Additional Day Of Actual Custody Credit

In his second argument, defendant contends he was in custody for 429 days prior to sentencing, but was erroneously awarded only 428 days of actual custody credits. (See Pen. Code, § 2900.5, subd, (a) [in all felony convictions, “when defendant has been in custody . . . all days of custody of the defendant . . . shall be credited upon his or her term of imprisonment”].) As he explains it, he was in custody awaiting trial from November 24, 2009 (the date of his arrest) to November 28, 2010 (when he made bail) and again from February 2, 2011 (the date of conviction) until April 1, 2011 (the date of sentencing). This amounted to 429 days in custody. As the People concede, defendant is correct in his calculations. He was thus entitled to one additional day of actual custody credits.

DISPOSITION

The abstract of judgment shall be amended to reflect 429 custody credits, for a total of 493 credits. In all other regards, the judgment is affirmed.

Richman, J.

We concur:

Kline, P.J.

Haerle, J.